

1 UNITED STATES BANKRUPTCY COURT

2 SOUTHERN DISTRICT OF NEW YORK

3 Case No. 19-23649-rdd

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5 In the Matter of:

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7 PURDUE PHARMA L.P.,

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9 Debtor.

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11 United States Bankruptcy Court

12 Tele/Video Proceedings

13 300 Quarropas Street, Room 248

14 White Plains, NY 10601

15

16 August 25, 2021

17 10:03 AM

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21 B E F O R E :

22 HON ROBERT D. DRAIN

23 U.S. BANKRUPTCY JUDGE

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25 ECRO: UNKNOWN

1 HEARING re Continuance of Confirmation Hearing From August
2 23, 2021

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1 P R O C E E D I N G S

2 THE COURT: Good morning. This is Judge Drain.

3 We're here in In Re Purdue Pharma L.P., et al., on the
4 second day of oral argument in relation to the Debtors'
5 request for confirmation of their amended Chapter 11 plan.

6 MR. HUEBNER: Your Honor, with apologies, we're
7 not hearing any audio. I'm not sure if the Court needs to
8 be heard yet or not. I apologize for interrupting.

9 THE COURT: Thank you. I thought it was off of
10 mute, but it wasn't. Let me start over again. Thanks.

11 Good morning, this is Judge Drain. We're here in
12 In Re Purdue Pharma L.P., et al., on the second and last day
13 of oral argument on the Debtors' request for confirmation of
14 their amended Chapter 11 plan.

15 I have the order of topics and time that the
16 parties have agreed to allocate to them, which the parties
17 circulated overnight. And I'm happy to follow that order
18 for purposes of today's hearing.

19 MR. HUEBNER: Perfect, Your Honor. Good morning.
20 For the record, Marshall Huebner, from Davis Polk &
21 Wardwell, on behalf of the Debtors.

22 Your Honor, two things before we start the agenda.
23 You know, as always, we have sort of a dual role as a plan
24 proponent and as an advocate sometimes for our stakeholders,
25 but also a shepherd of the process.

1 Your Honor, I think it was not lost on anybody on
2 Monday that Your Honor expressed strong views about
3 attempting to get to a deal with a final very small number
4 of stakeholders not yet onboard. I believe three times you
5 mentioned the heroic effort of Judge Chapman, who worked in
6 Phase 3 of mediation.

7 I do want to advise the Court that Judge Chapman
8 seems to have heard that, and she is absolutely back in the
9 saddle, working extraordinarily hard, again, as a sitting
10 judge, for, of course, no compensation, just part of public
11 service, to try to see if anything can be done.

12 As I'm sure it's also not going to be a surprise
13 for the Court to hear, further work tailoring and narrowing
14 the releases is something that is the subject of many of the
15 objections, and certainly the subject of a fair number of
16 very clear thoughts from the Judge.

17 And so while on one hand, because there are
18 elements that are being discussed among the parties. And I
19 won't say more than that, except that the Debtors are
20 working around the clock to try to facilitate to see if
21 something can be done assisting Judge Chapman.

22 There are other elements as well, as there were in
23 round 3 of mediation. There were new covenants and
24 economics and other things. And I can't say more than that.
25 That would be inappropriate, and so, of course, I won't.

1 But a fourth or additional element is the
2 releases. Strategically, one might have argued for a
3 position that that should be sorted used as part of a
4 potential big set of final trades in a ground-floor
5 mediation by Judge Chapman. But I think that would not have
6 been the right answer.

7 The right answer is to fix (indiscernible) it now
8 and give the Court and all parties comfort that people,
9 including on the Sackler side, and facilitated very strongly
10 by the Debtors and others, continuously recalibrating and
11 trying to make this the best possible deal for all Purdue
12 stakeholders.

13 In the middle of the night last night, we filed
14 the ninth amended plan of reorganization, which really does
15 one thing primarily, which is substantially further narrow
16 and tailor the third-party releases that I think it's fair
17 to say lie at the heart of much of the colloquy and
18 objection at this hearing.

19 And so rather than saving it to be offered in
20 mediation, which is now basically ongoing, it's in already
21 and there for people to see. I think some people understand
22 it. Some people, I think, are still having it explained to
23 them. It's very complicated. We are working around the
24 clock on located things.

25 So in about 30 seconds, I will turn the podium

1 over to Mr. Uzzi, who will, I think, probably be in the best
2 position to describe to describe those releases, and how
3 they have changed, and how it is hopefully important to the
4 objectors , and also quite important to the Court.

5 But before I do that, one over item in my other
6 role, which is I do want to let the Court know that the Gulf
7 objection, as Your Honor may remember, was argued by Mr.
8 Luskin (indiscernible) with Mr. Tobak, negotiations towards
9 settling that also continue, as we are. Obviously, as
10 you've seen, you know, every time I get up, we have either
11 another settlement or fewer objections to announce. I think
12 everyone knows that's our MO, and we're still doing it here
13 at the last day of oral argument. And so those are the two
14 procedural matters before we get to the agenda.

15 So with that, with the Court's permission, I'd ask
16 Mr. Uzzi to help explain the changes, and certainly in the
17 minds of the Sacklers, you know, the changes that they made.

18 THE COURT: Okay. Before I hear from Mr. Uzzi, I
19 think I ought to say two things. First, I have not spoken
20 to Judge Chapman about her continuation as a mediator in the
21 case, either before or after what you have just described.
22 Nevertheless, I'm quite grateful to her, you know, if she's
23 been willing to take on that role. And I obviously
24 encourage the parties to try to resolve their differences,
25 including with her really dedicated and expert efforts,

1 which she brings to every mediation, and certainly from my
2 reading of her mediators report that was filed earlier in
3 the case, she brought to this one. So I welcome that
4 development. Although it's a surprise to me. But I'm
5 grateful for it, and it's certainly in line with the
6 admonition I gave to the parties on Monday.

7 Secondly, unfortunately, I have not had the
8 opportunity to review the change in the ninth amended plan.
9 So I'm largely in listening mode here, not commenting mode.
10 But again, I welcome the parties continued work on the scope
11 of the release and injunction of third-party claims.

12 So, having said that, I'm happy to hear from Mr.
13 Uzzi.

14 MR. HUEBNER: Your Honor, before he begins, just
15 two very quick notes. To give credos where they're also
16 due, the first round mediators also continued after
17 mediation formally entered (indiscernible) mediation --

18 THE COURT: I understand that.

19 MR. HUEBNER: -- privilege --

20 THE COURT: And, you know, we've been really
21 fortunate to have world-class mediators in this case, and
22 they take their role -- they took their role and take their
23 role seriously and continued beyond the original time
24 allocated. And you know, again, I encouraged that under the
25 mediation order. And similarly, even though my mediation

1 order for Judge Chapman set a specific deadline for the
2 parties, and as everyone knows, deadlines are important,
3 based on what you've described to me, the discussions that
4 are ongoing now are similarly under that order. If you face
5 a similar deadline, which is I intend to rule on Friday on
6 this request for confirmation on the plan.

7 MR. HUEBNER: Yeah, Your Honor. That was the
8 tentative point I was going to make. I actually did not
9 have time to double check it, but hopefully my memory is
10 right, that the order actually expressly contemplates post-
11 mediation conversations that I actually believe keep our --
12 remained governed by the confidentiality shields. And so,
13 everyone who is having those conversations is treating them
14 as such.

15 So with that, Your Honor, let me turn my
16 microphone off and turn it over to Mr. Uzzi to explain what
17 was filed overnight.

18 THE COURT: Okay.

19 MR. UZZI: Thank you, Your Honor. Gerard Uzzi of
20 Milbank, on behalf of the Raymond Sackler family.

21 Your Honor, I think what I'd like to do here is
22 explain to you what we try to accomplish and the changes,
23 but not necessarily go through those changes line by line.
24 Obviously, if you'd like us to do that, we can do that as
25 well. But at least, you know, first give you the conceptual

1 overview, and then I'll take direction from the Court.

2 Your Honor, I mean, I would agree with Mr.

3 Huebner. You know, we did not and weren't interested in

4 (indiscernible) these things up as a bargaining chip in

5 mediation, further discussions. What we've tried to do is

6 be sponsored, not only to the Court's comments, but also to

7 comments of some of the objectors, to the extent that we

8 could.

9 Before I get into the actual changes, Your Honor,

10 just for the sake of clarity of the record, I think there

11 are a few things that I can say that I hope is helpful as it

12 relates to what the releases don't cover, never have

13 covered. And you know, one of those things, of course, is

14 criminal liability.

15 And I know Your Honor knows that the releases

16 don't cover criminal liability. There continues to be, you

17 know, some innuendo and clouding, I think, that issued both

18 inside this courtroom and outside. And I thought it might

19 be helpful, just for on the record, to hear a Sackler

20 representative say these releases do not cover criminal

21 liability. Hopefully, that puts any debate on that topic to

22 an end.

23 There's been a number of suggestions of the tax

24 liability being released. Tax liability is expressly carved

25 out. There is no release of tax liability. It doesn't

1 matter who the taxing authority is. There's no release of
2 tax liabilities.

3 There also has been some suggestion that we were
4 attempting to shield releasing parties from their future
5 conduct. The release never contemplated that. We've
6 clarified that. But it was something that was never in the
7 release, and I thought it might be helpful just to clarify
8 that.

9 As far as the comments we've tried to address now,
10 that were admittedly picked up by the release, the first one
11 is one that I would characterize as the undiscovered
12 McKinsey issue, or the undisclosed McKinsey issue, or
13 something to that effect. And the release was drafted, Your
14 Honor, against a backdrop of the Sacklers and their entities
15 having been thoroughly examined and thoroughly investigated.
16 And we just, in the drafting of the releases, believe that
17 if there were that type of party, somebody would come to us,
18 they would identify it, and of course, we would add to that
19 excluded party list. And that's the spirit of how we had
20 drafted that release in (indiscernible).

21 What we originally proposed on Monday to address
22 what I'll call the undisclosed or undiscovered McKinsey
23 issue, is a carve out for -- we used the defined term
24 willful misconduct, which was probably not a good defined
25 term -- but to really pick up some intentional wrongdoing.

1 As we worked on this over the last day, we decided
2 to make really what I think is a material change here as it
3 relates to the third-party releases of the shareholder
4 consultants. And that is to simply carve them out. And so
5 the shareholder consultants are carved out -- with one
6 exception I'll talk about in the second -- are carved out of
7 the release, the third-party release, completely. And we
8 hope that that just dispenses with the issue.

9 The one consultant that's not an outside third-
10 party firm, which then exists on what used to be Exhibit H -
11 - and we've updated it to be Schedule X, I believe, now --
12 is simply Norton Rose, Your Honor. And they do fit into a
13 different category. They have been both the family and the
14 Debtors' -- with their predecessor, Chadbourne & Parke,
15 counsel to the firm for decades. They have been subject to
16 discovery here. They have been investigated. And we do
17 think it's appropriate to keep them on the exhibit. But
18 we've otherwise carved everybody else out.

19 Because of that, we then removed the defined
20 willful related party claim, as we just don't believe it's
21 necessary anymore and doesn't and shouldn't probably apply
22 to the other parties that were in the release who are
23 similarly situated to what I would call the core releasees
24 here.

25 I'll note further, Your Honor, if the exhibit had

1 my permanent, Milbank -- and I don't think I'm stretching to
2 say the release of professionals is pretty standard in any
3 release -- but we heard the commentary of why does a certain
4 named firm need a release.

5 The fact is, my firm doesn't need a release, so we
6 carved ourself out. And we did that because I, along with
7 all of my co-advisors here, we do not want to be a
8 distraction here. So Milbank is out, and the other named
9 third-party advisors are also off the schedule. And we hope
10 that that goes a material way to addressing all of the
11 concerns.

12 The other issue we tried to address, Your Honor,
13 is to be further responsive on the non-opioid-related
14 claims. And as you'll remember from Monday, Your Honor,
15 there was some colloquy over what did that mean. First,
16 I'll say we've added "reckless" to the definition there of
17 the type of conduct, the predicate conduct or the predicate
18 state of mind, I should say, that would trigger that.

19 Your Honor asked me if that definition picked up
20 fraud, and I incorrectly said no. And I apologize for that.
21 I went back and read it and I think under that definition,
22 it already picked up fraud. And actually, things are a lot
23 broader than fraud, are not limited to fraud. And the
24 operative word, when you take a look at it, Your Honor, is
25 "unlawful." All right? So, clearly, fraud is unlawful, but

1 unlawful isn't limited to fraud. And I think that that word
2 really does it. But we did add fraud or fraudulent conduct
3 to the definition, just to be clear.

4 We changed then, Your Honor, the definition from
5 willful misconduct to non-opioid actual misconduct claim.
6 We just think that that is a more descriptive term. I've
7 had a lot of semi-scholarly colleagues try to tell me that
8 willful misconduct was confusing, so we just try to take
9 that confusion out. That, Your Honor, applies to all the
10 releasees. So if all the releasees are on for non-opioid
11 liability are subject to the non-opioid actual misconduct
12 claim.

13 And then, if you look -- when you go through this,
14 Your Honor, and you know, I will give you the cite. In
15 10.7(v), where the heaviest blackline is, that is simply to
16 pick up the indemnification claims that could otherwise be
17 asserted against the Sacklers. If we're carving out from
18 the releasees the -- I'll call it the McKinseys of the world
19 -- we can't have, of course, a backdoor coming back in. And
20 we just clarified that language in there. It was always
21 like that, Your Honor, but we just needed to change the
22 words in order to pick it up because of other changes we've
23 made.

24 Your Honor, that's the overview. I'm happy to go
25 into some detail. I'm also happy to answer any questions

1 you might have.

2 THE COURT: Well, again, I haven't had a chance to
3 parse the language, but I appreciate the overview. I guess
4 what I would say -- and I appreciate that these changes, as
5 you've described them, are constructive and have narrowed
6 considerably the release -- is that I'll carve out some time
7 at the end of today's argument for people who have objected
8 on the basis of the breadth of the release, and that only.
9 Not any other aspects of the release, but just the breadth
10 of the release, to have the chance to point out to me their
11 view, if they still have it, that the releases still overly
12 broad.

13 So I think all of the people on the call today or
14 on the Zoom today have the proposed allocation of time for
15 oral argument today. And just at some time at the end of
16 that schedule for people to point out to me if they want to,
17 and for the Debtors and others to respond, issues that
18 remain as to the breadth of the release language. And that
19 will --

20 MS. UZZI: Thank you --

21 THE COURT: -- give me a chance to look it over at
22 the lunch break also.

23 MR. UZZI: Very well, Your Honor.

24 THE COURT: Okay. Thank you.

25 MR. HUEBNER: Okay. So, Your Honor, I believe

1 that brings us to the first item on the agenda, which is
2 best interests of Ditech. Mr. Goldman asked for 35 minutes,
3 so we're fine with that. I may run a little bit longer than
4 my initial plan of 20, for fairness and symmetry, and
5 because I have something I want to begin with before I
6 actually head into best interests.

7 THE COURT: Okay.

8 MR. HUEBNER: Your Honor, there was some
9 interesting colloquies from the Court, pretty scholarly,
10 frankly, for those of us who are, you know, bankruptcy
11 folks. On Pages 180-182 of the transcript, and then again
12 on 57-259, about the factor of Metromedia that requires, or
13 seems to contemplate, creditors being paid in full, which
14 just makes no analytic sense, because there's nothing to
15 release if creditors are paid in full. And Your Honor cited
16 millennium labs and their fairness test, the much more
17 recent Third Circuit decision, as seemingly a logical
18 imperative and much more sensible.

19 In addition, Your Honor, you actually cited
20 ourself to 1129(a)(7) on Page 181, Line 12-16, and said, you
21 know, isn't this the right answer? Because if 1127 requires
22 -- 1129(a)(7) requires that you're getting more than you
23 would get in another scenario, is not definitionally fair,
24 so that proving the best interests test may actually be kind
25 of what the Third Circuit meant.

1 Third Circuit Standard, as of course I think all
2 litigants in this case know, in their recent decision from
3 2019, is that, "The hallmarks of permissible nonconsensual
4 releases are fairness, necessity to reorganization, and
5 specific factual findings to support these conclusions."
6 That's Metromedia at Page 139. I'm sorry -- Millenium --
7 I'm just so tired -- at Page 139.

8 So I think that's actually dead on. And so, you
9 know, when I now will launch into my best interests
10 argument, which is really so important because it is the
11 view of basically everybody in the case, rather than one
12 objector, implicitly or explicitly, that this is the highest
13 and best recovery for creditors, and it is better than a
14 liquidation, plus the pursuit of third-party claims. I
15 think that actually the Third Circuit maybe had it right.
16 And fairness means, you know, if you can't do better than
17 what we're getting for you under this plan, what else should
18 we be doing but this plan?

19 So with that, if Your Honor will let me launch it.

20 THE COURT: Can I -- and I, at risk of -- and I
21 don't think it's -- it doesn't derail your argument, but I
22 want to be clear. The best interests test, as set out in
23 Section 1129(7), is a statutory test, and one needs to
24 follow the words of the statute. And the courts to some
25 extent disagree about what the statute says, based on its

1 plain terms.

2 What I was addressing contemplates one
3 interpretation of the best interests test. But even if one
4 takes the other interpretation of it, which is that you
5 don't look at what one gets on one's claim in the case, you
6 just look at what you get on the claim in the case, I think
7 that fairness, in the sense described not only by the
8 Millenium Court, but actually in the earlier section of
9 Quigley by Judge Bernstein, requires some analysis, if it
10 can be done, into what sort of recovery the enjoined parties
11 would have if the plan were not confirmed. And that's not
12 applying strictly the best interests test. That's a more
13 rigorous view of fairness than one might normally apply to a
14 9019 settlement, in other words.

15 MR. HUEBNER: Your Honor, I agree completely. And
16 as you'll hopefully here in a few minutes, I'm going to
17 cover every alternative interpretation of 1129(a)(7), and
18 show you why we are extraordinarily comfortable that we meet
19 the statute's 24:16 we meet the statute's ____

20 Your Honor, 1129(a)(7), as of course everyone
21 knows, requires that the Debtors demonstrate that rejecting
22 impaired creditors who receive no less under the plan than
23 they would in the hypothetical Chapter 7 liquidation.

24 Here, Your Honor, the Debtors' proposed plan is
25 expected to distribute well in excess of \$5.5 billion in

1 cash on account of contingent liability claims. There is no
2 dispute that creditors will recover billions more under
3 claims against the Debtors than they would recover if the
4 Debtors had to liquidate.

5 The only possible dispute is whether the rejecting
6 creditors could actually recover, in a Debtor liquidation on
7 their own third-party claims against the Sacklers and
8 others, value that exceeds all of their many recoveries
9 under the plan, including the settlement of those third-
10 party claims, but as to a very small number of parties is
11 being imposed by the will and the votes and positions of the
12 overwhelming majority. There are three principal objections
13 why this objection fails.

14 First, as Your Honor just noted, the Second
15 Circuit has not actually determined whether third-party
16 claims should be considered at all in the best interests
17 analysis. And other courts that are also thoughtful, do not
18 agree with Quigley and Ditech.

19 The AHC argued this in their brief at Pages 155-
20 158. I will actually rest of their papers on this point,
21 because I actually prefer to spend my time on the assumption
22 that it is obligatory, including for the larger fairness
23 reasons, for us to get the Court and all parties comfortable
24 that even rejecting creditors do better under this plan than
25 any other alternative we know of.

1 So, Your Honor, if you accord with Quigley and
2 Ditech, which is just fine for us and many others, it is
3 clear beyond peradventure that under the holdings of those
4 cases, we are not required to assign a specific dollar value
5 to the potential recoveries on rejecting creditors'
6 unknowable, inestimable third-party claims.

7 To the contrary, both of those cases make it
8 crystal clear that the value of third-party claims is only
9 to be considered when the claims are both, one, not
10 speculative, and two, capable of estimation.

11 Let's take a close look at those cases. Quigley
12 is an asbestos case in which Judge Bernstein estimated the
13 value of third-party claims against Pfizer, Quigley's
14 parent, based on a 19-year track record of settlements, for
15 which Pfizer had paid over \$1.2 billion and a mathematical
16 average of 23 percent of the claims asserted against it over
17 almost two decades. 437 B.R. 134, 146. But that two-decade
18 track record, the claims at issue were not speculative and
19 were capable of estimation.

20 In Ditech, the Debtor tried to do something really
21 pretty sneaky, and they were caught. They actually, in
22 fact, estimated the settlement and resolution value of the
23 varied third-party claims for some purposes under their plan
24 and (indiscernible). And then -- but not for these
25 purposes. And Judge Wiles said, no way, you can't pick some

1 purposes and not others. You have already told me that the
2 claims are not speculative and hypothetical, but rather that
3 you can estimate them. 606 B.R. 544, 620-621.

4 The contrast to the instant facts could not
5 possibly be greater. Unlike Quigley, there is no multi-
6 decade history of judgments or settlements or percent
7 allocations against the third parties to draw from.

8 And unlike in Ditech, the Debtors have
9 consistently stated that the value of an individual
10 rejecting creditor's direct claims, what they would actually
11 recover some day if this plan failed, is the very definition
12 of unknowable and unquantifiable.

13 Your Honor, given the Debtors' extensive record
14 evidence on liquidation, including its DelConte expert
15 report, Paragraph 9, et seq., the disclosure settlement
16 Sections 173-175, the objectors really need to demonstrate
17 that their own actual recoveries on direct claims in a
18 liquidation would be massive, knowable and quantifiable.

19 I will stop at 11 reasons why that quixotic
20 endeavor cannot succeed. One, the terrible destruction of
21 estate value in a liquidation. It is uncontested and
22 uncontestable that the liquidation of the Debtors would
23 greatly reduce the value available to go to these very
24 creditors. DelConte at 9; Turner at 22; disclosure Appendix
25 B at 11. So those billions get wiped from creditor

1 recoveries in a liquidation.

2 Two A and two B, massive professional fees and
3 totally uncertain allocation of any recovery to specific
4 creditors from the estates in a liquidation. Liquidating
5 the estates and resolving the hundreds of thousands of
6 claims filed, will require a multi-year massive investment
7 of professional these.

8 Liquidating the claims and resolving the relative
9 entitlement of creditors vis-à-vis one another, once Phase 1
10 mediation is erased, would be an intercreditor litigation
11 maelstrom of victims and stakeholders against victims and
12 stakeholders, whose outcome is unknowable. The only thing
13 we do know is that rational fees will be at least half a
14 billion and maybe more than \$1.5 billion. DelConte
15 declaration at Paragraph 36.

16 And as Mr. Shore, who actually represents tens of
17 thousands of PI victims, told the Court: "Do not forget. We
18 are the largest group, the largest number of voters, the
19 largest claimants." And as he had told many of us, they
20 will be back if there is no deal under this plan.

21 Number 3, reduced recovery on the estate claims
22 against the Sacklers. The estate might recover less on its
23 claims against the Sacklers in a liquidation. Mr. DelConte
24 sets forth multiple reasons for this in his report. See
25 DelConte declaration at 33. This result is also described

1 in our disclosure statement. It's painful, but it's true.
2 No party cross-examined Mr. DelConte on this sworn
3 testimony.

4 And then we have the testimony of Ms. Conroy, who
5 has been suing Purdue for 19 years under his partner and
6 (indiscernible) partner, named partner, who was there
7 alongside her. Her testimony, August 16, transcript 18, 9-
8 22, is that this deal reflects a peace premium where we're
9 getting more than we would get if global peace were not able
10 to be on offer.

11 Four. The DOJ's claims. The DOJ has an agreed \$2
12 billion forfeiture claim with superpriority status. They
13 also have billions of dollars of other claims, that if the
14 deal falls apart, they will likely assert, or likewise, in
15 rem claims, priority claims, nondischargeable claims,
16 because they're the federal government, et cet.

17 Those claims might absorb every dollar of net
18 estate liquidation proceeds, leaving nothing for anybody
19 else. Because among so many other things, even if parts of
20 the deal stuck, we don't think we can satisfy the conditions
21 for getting the \$1.775 billion forfeiture credit that is in
22 fact on offer in the settlement this Court approved, with
23 them ironically over the objection of the remaining
24 objectors to confirmation.

25 Five -- which is a coalition of sorts. Instead of

1 four or five or more billion dollars that non-federal
2 governmental creditors in Class 4 are getting, they will
3 likely get close to zero. The consequence, when you add up
4 all the predecessor points of the value destruction in
5 seismic into creditor reallocations that I have outlined, is
6 massive and uncontroverted.

7 Mr. DelConte's liquidation analysis lays out in
8 two of the three scenarios, Class 4 creditors get zero.
9 Only in a high case scenario, there's \$699.1 million for all
10 creditors to share, not just the rejecting creditors in
11 Class 4.

12 The objectors did not question any of these
13 conclusions, although they had ample opportunity in days of
14 trial testimony. I talked on Monday about my simplistic
15 view that we're here to apply facts to law. No objector
16 designated a competing expert. No objector submitted an
17 expert report with a competing liquidation analysis. No
18 objector designated a rebuttal expert, critiquing Mr.
19 DelConte's analysis. No party even deposed Mr. DelConte.
20 And no party spent any material time on cross-examination on
21 these issues. If they meant it, we should have tried to
22 prove it.

23 There is no evidence of any kind from any party at
24 all that the likely recovery on their own direct claims is
25 concrete for estimable. The Debtors' evidence that the

1 claims are speculative and not capable of estimation is
2 overwhelming.

3 Six -- and a lot of these are tied to the public
4 good and to helping America and Americans -- abatement. Dr.
5 Gaurisankaran testified, without contravention, and I quote,
6 "Abatement programs that reduce opioid misuse for a
7 population will confer economic value to all entities that
8 serve the same population and claim to incur costs because
9 of opioid misuse." Declaration at 47. And that abatement
10 results in "multiplier effects" that provide creditors,
11 especially governments, I believe, with value that may well
12 exceed the dollar value distributed under the plan.

13 In the liquidation, there can be no guarantee that
14 all or most or even a substantial portion of the funds
15 creditors someday recover from the Sacklers would actually
16 have to go to abatement, and thus, this important multiplier
17 is gone.

18 I do want to reiterate, Your Honor, one last time,
19 my apology to Washington and Maryland, who seemingly passed
20 statutes -- who did pass statutes -- of course, what they
21 said to the Court is true -- directing their recoveries must
22 go to abatement. I got that wrong and I'm very sorry about
23 that. But as I also then noted, there are many, many other
24 states whose situation is exactly the contrary, and there
25 are tens of thousands of other creditors who would be in

1 line with no obligations, as they have extraordinarily
2 agreed to in this case, to dedicate all of their recoveries,
3 other than the PIs, to abatement.

4 Seven. Objectors would need to bridge a chasm of
5 billions of dollars to win an 1129(a)(7) argument, because
6 they are billions in the hole due to the total wipeout of
7 their plan recoveries. And it's from there they must begin
8 to try to argue that exclusively and solely from their own
9 potential recoveries on non-speculative claims against the
10 third parties, they would get more than the billions that
11 they would make unavailable to everybody if the plan was not
12 confirmed.

13 Eight. It is utterly impossible for any of the
14 few objecting rejecting creditors to demonstrate that they,
15 and only they -- and that's the critical phrase -- and only
16 they, will when the frenetic race to the courthouse against
17 third parties.

18 The objectors' suggestion that the Debtors could
19 have hired a damages expert to address the objectors' best
20 interest argument only highlights the staggering depth of
21 their misunderstanding of the law. Damages are about claims
22 that one could assert. The best interests test is about
23 recoveries; what I actually do better than this plan at the
24 end.

25 It is beyond cavil, Your Honor, that no claimant

1 could possibly credibly predict that the actual recovery on
2 their claim against the Sacklers, after years of internecine
3 warfare among creditors and disorderly races to hundreds of
4 thousands -- or for thousands of courthouses -- is knowable.
5 It's like trying to solve a single equation that has
6 hundreds or thousands of variables. 4(a) plus 5(b) minus
7 5(c) plus 8(d) equals X? It cannot be solved.

8 And it has nothing to do -- nothing -- with the
9 merits and strength and validity of the claims of any
10 individual entity against the Sacklers. Because for an
11 individual rejecting creditor to prove that it itself would
12 actually recover more, it can't only show that it's likely
13 to get a big judgment. It has to show that no one else
14 would, and only they would.

15 Because logic dictates that if the three rejecting
16 states who have made a best interests objection have
17 meritorious claims, so do all the non-rejecting states. And
18 if all the states have meritorious claims, then it stands to
19 reason that many other public creditors also have
20 meritorious claims. And if all states and tribes and
21 municipalities have valid claims against the Sacklers,
22 likely so do the hundreds of thousands of private contingent
23 liability claimants.

24 And every one of these groups for whom the Debtor
25 is a fiduciary has filed proofs of claim under penalty of

1 perjury, that they believe that they have those claims
2 against the Debtors and the Sacklers, which is why the
3 States' \$2.156 trillion claim, as large as it is, is dwarfed
4 20 times over by the \$39 trillion of other filed claims.
5 And that's only 10 percent of them, because while the
6 states' claim was liquidated, most of the other claims, 90
7 percent of them, were not.

8 Nine. Thousands of claimants would be chasing a
9 smaller and possibly (indiscernible) of assets. Let's
10 assume that direct claimants are able to recover every penny
11 of the aggregate personal wealth of the individual members
12 of the Sackler Family, named as Defendants in the third-
13 party litigation. Claimants would still come up billion
14 short of the \$4.375 billion that the Sackler Families have
15 agreed to pay under the settlement, and even more billions
16 short of the \$5.5 billion total in minimum projected value
17 that those creditor standard receiver under the plan.

18 And during the years that people were suing the
19 Sacklers, one would imagine the Sacklers will pay hundreds
20 of millions or more in legal fees, and might, for example,
21 use their assets to settle with non-rejecting creditors. So
22 if non-rejecting creditors get settlements, then rejecting
23 creditors even more can't do better than they would do under
24 the plan. Which is why the intercreditor complexity, which
25 seemingly, virtually every single party in the entire case,

1 except for nine, seemingly understands and has reluctantly
2 and painfully led them to conclude that this settlement,
3 which does leave the Sacklers with material wealth, is
4 better for them, the claimants, than any other alternative.

5 Ten. Claimants cannot reasonably estimate the
6 prospect of they themselves successfully recovering on their
7 direct claims. I am not going to cite -- and I am most
8 certainly not ever going to accord with or endorse the
9 evidence and argument submitted by the Sacklers about their
10 lack of culpability and their defenses to collection with
11 respect to their trusts. Not now. Not ever. They are the
12 Defendants and estate is the Plaintiff, along with many
13 others. And if we do not settle, we will be suing them for
14 billions of dollars. Make no mistake.

15 But what I am is the fiduciary and spokesman for
16 the shareholders. The Debtors didn't vote on the plan.
17 That's not our job. But 38 attorneys general, and the UCC,
18 and the AHC, and the MSG, and the adult (indiscernible), and
19 the pediatric (indiscernible), and the tribes, and the
20 hospitals, and the TPPs, and the rate payers, and the
21 Board's Special Committee, considered a great, great many
22 things in deciding to accept this settlement.

23 I think it is fair to say that while we disagree,
24 Jersey law, Wyoming and Connecticut trusts, and Mr.
25 Cushing's testimony, do raise litigable issues with respect

1 to the ability to recover on direct claims against the
2 Sacklers from the very material assets held in their
3 (indiscernible) trusts.

4 As I noted on Monday, Your Honor -- ironically, I
5 think it was Paragraph 239 of our brief -- the Debtors have
6 the strongest claims against those trusts, because we have
7 in rem claims based on the irrevocable vested in the estate
8 of the fraudulent transfer and analogous claims. Those are
9 not direct claims. So they don't figure into the
10 hypothetical 1129(a)(7) showing when you're trying to weigh
11 a direct claim as an add-on to what you might get in a
12 liquidation.

13 And Your Honor, in this regard, the litany I just
14 read to you, it is incredibly telling that in this case,
15 with over half a million creditors, there is one objection,
16 one, that makes a best interests objection. One. Mr.
17 Gold's pleading on behalf of DC, Maryland and Connecticut.
18 And with no disrespect intended, because I think he's doing
19 a terrific job and he's a very serious lawyer, he made that
20 objection in one page of his brief. No factual support for
21 the types of claims that would need to be proved.

22 THE COURT: Actually, I thought it was just
23 Connecticut --

24 MR. HUEBNER: Finally, Your Honor --

25 THE COURT: I thought it was just Connecticut and

1 Maryland on that one. DC joined the other one --

2 MR. HUEBNER: Oh, Your Honor, I apologize. I
3 thought that objection said filed on behalf of DC, Maryland
4 and Connecticut. But if DC didn't join that argument, then
5 it's one objection on behalf of two parties, as opposed to
6 three. But I think, you know -- I think the point is the
7 same.

8 THE COURT: You know what? I was wrong. It does
9 include DC.

10 MR. HUEBNER: Your Honor, Judges are never wrong.

11 THE COURT: Well, I was wrong.

12 MR. HUEBNER: Number 11. Your Honor, Number 11.

13 Claimants rejecting creditors making a best interests
14 argument cannot possibly quantify or know or estimate the
15 massive cost and delay to them of lengthy and chaotic
16 jurisdiction, because as many as 58 jurisdictions all over
17 the world. No creditor could possibly allege without
18 speculating what they would actually recover net of the cost
19 of litigation and collection and delay, after years of
20 (indiscernible) warfare by thousands of creditors with all
21 against all.

22 For these 11 reasons, Your Honor, among others,
23 the direct claims of three creditors out of the hundreds of
24 thousands who have raised a best interests test, I believe
25 are literally the archetype -- actually the archetype of

1 claims that in these complex circumstances are speculative
2 and not capable of estimation.

3 Your Honor, that brings me to my third and final
4 meta point. While I hope that my reasons each individually,
5 and certainly collectively, demonstrate the views of so many
6 for whom I'm speaking today, that rejecting creditors would
7 not do better in the liquidation, and would do ever so
8 terribly worse even inclusive of their direct claims. I
9 have overwhelmingly, in fact, perfect empirical evidence
10 from July and August of 2021 for the unassailable veracity
11 of this position.

12 38 states, 80 percent of the voting states have
13 done the work for years, litigating against Purdue and the
14 Sacklers, weighing the alternatives, and fighting like hell
15 for their citizens against Purdue and the Sacklers. And
16 they have concluded that the Plan provides superior value to
17 states than does liquidation. This is true for this -- many
18 other creditor groups, who I will not again list, who
19 support this Plan. And between all these parties, they are
20 represented by many of the most sophisticated, and one might
21 argue fearsome, mass tort plaintiffs' firms and other
22 litigation firms in this country whose clients I can
23 guarantee you, having done almost nothing else for three and
24 a half year, have suffered at least as much loss and have
25 unthinkable antipathy for the Sacklers as any of the Plan

1 objectors.

2 In stark contrast to the wild speculation to the
3 nth power, they would be involved in assessing what an
4 individual rejecting creditor, out of 614,000 competitors,
5 would actually recover in liquidation, the market of states
6 identically situated to the one best interest set of
7 objectors, has spoken on this point with extraordinary
8 clarity, and chosen which gives them the better recovery.

9 And of course, Your Honor, the bankruptcy system
10 under the guidance of the Supreme Court, love market tests
11 to prove things. See e.g., 203 N. Lasalle, 119 S.Ct. 1411.
12 There's no better way to know what something is worth than
13 what people will actually choose when faced with a choice.
14 80 percent of identically situated claimants clearly think
15 that their direct claims against the Sackler cannot close
16 the more than \$5.5 billion gap between what people are
17 getting under the Plan to help their citizens in these
18 terrible times. And the alternative, whose worst feature
19 would be creditors fighting one another and competing
20 another.

21 And for the record, Your Honor, the \$5.5 billion
22 number that I have been using is exceedingly conservative
23 because it does not take into account, as our evidence shows
24 recoveries on insurance proceeds, which we hope are the
25 billions, and terminal asset value when NewCo is monetized,

1 that it's slated also to flow all but exclusively to
2 governmental creditors, these very objecting creditors, for
3 abatement with its multiplier under the Plan.

4 I also didn't count PHI, which many people believe
5 itself could be worth billions, especially to states by
6 avoiding further damage, and helping their citizens, or the
7 public spillover multiplier. None of that is in the math.
8 \$5.5 billion is just the cash in the sworn evidence and
9 nothing more.

10 And, Your Honor, this is therefore a much more
11 central plaintiff case than just best interest. The value
12 hold that any alternative to this Plan, and certainly
13 liquidation, would create for all creditors, but for the
14 states far more than anyone else, is way bigger than \$5.5
15 billion, and it cannot possibly be refilled and then
16 exceeded by a liquidation and direct suits against the
17 Sacklers.

18 I should also note, Your Honor, that I did not
19 include or take into account Mr. Prices argument that Your
20 Honor Mr. Gold about on Monday, that over \$4 billion out of
21 the \$10.4 billion in cash that the Sacklers took out of
22 Purdue, which in 2008 and 2019, went directly -- directly to
23 state and federal governments at the Sacklers' request to
24 pay their person income taxes. Because they set Purdue up
25 as a limited partnership, the Sacklers, it's not a taxpayer.

1 I believe, Your Honor, cited a figure of \$285
2 million in the Atkinson declaration about Connecticut;
3 ironically, the objector on best interest ground. And the
4 federal government whose number is 10 times that, who might
5 face serious exposure as the transferee's a preferential
6 transfers that were made for the benefit of the Sacklers.
7 There is a day they have to pay that money back so that all
8 creditors could share it, not just the data to keep it.

9 And that also goes into best interest because in a
10 liquidation, that money might come back into the estate to
11 be shared by all. But as I said, I left many, many things
12 out of my core analysis because it was enough.

13 To assume, Your Honor, that 80 percent of the
14 states are wrong about what is in the best interest of
15 states is not rational. And even out of the nine objectors,
16 only two states and D.C. even made the objection at all,
17 which is more telling. States have accepted the Plan, as
18 all other creditors have, by an overwhelming margin -- all
19 other creditor classes and groups have because they believe
20 that while it is painful and difficult and horrible to the
21 lives of many to leave the Sacklers with wealth, the Plan
22 furthers their best interests and provides value billions in
23 excess of what would result from the meltdown of the estates
24 and resuming the litigation free-for-all that prevailed
25 before these cases began.

1 Your Honor, except for lawyers, nobody does better
2 in a liquidation, nobody, which would destroy so much that
3 so many have worked for so long to bring -- to bring to
4 fruition, to help victims and abate the opioid crisis. We
5 ask that the best interest objection be overruled.

6 THE COURT: Okay. Thanks.

7 Mr. Goldman, I think you're taking this on behalf
8 of Connecticut, Maryland, and D.C.?

9 MR. GOLDMAN: Yes, Your Honor, and I can add to
10 that list since we have been coordinating among all the
11 objecting states, and the states of Oregon, Delaware,
12 Vermont, Rhodes Island, and Maryland, and Washington.

13 THE COURT: Okay. Although I don't think any of
14 those actually raised this issue.

15 MR. GOLDMAN: I would correct the record, Your
16 Honor. Washington and Oregon did join in our objection at
17 Paragraph 104 of their objection.

18 THE COURT: Okay.

19 MR. GOLDMAN: So, there are actually five -- well,
20 four states and the District of Columbia that are advancing
21 this objection.

22 THE COURT: Okay.

23 MR. GOLDMAN: So, let me proceed. I think Mr.
24 Huebner did a good job of explaining the best interest test,
25 but if I could just go over it briefly to set the framework

1 for my argument? As you mentioned, it requires that in a
2 peered class of creditors, each of the class members must
3 either accept the Plan or will receive under the Plan, at
4 least as much as they would receive in a Chapter 7.

5 THE COURT: Actually, that isn't the specific
6 language of 1129(a)(7), right? The provision says, "With
7 respect to each impaired class or claims... each holder of a
8 claim or interest of such class has accepted the plan; or" -
9 - and then here's the key language -- "will receive" will
10 replayed -- "or retained under the plan on account of such
11 claim... property of a value as of the effective date of the
12 plan that is not less than the amount that such holder would
13 so receive or retain if the debtor were liquidated under
14 chapter 7 of this title". I emphasize the word, "so"
15 because I think it's arguably there for a reason. And as
16 the AHC objection points out, it would seem to modify on
17 account of such claim, and therefore, focus the Court on the
18 claims' recovery in Chapter. 7, as opposed to just recovery
19 generally.

20 I don't know if you have a response on that point?

21 MR. GOLDMAN: Of course, both the courts in
22 Quigley and Dietech have rejected that --

23 THE COURT: They -- well, actually, they didn't
24 reject it in that the argument wasn't made to them. There's
25 no discussion of that reading or the meaning of the word, or

1 -- of "so" in that provision, in either of those cases that
2 they cite. But I appreciate that Judge Garrity and Judge
3 Bernstein are certainly -- or -- but Judge Bernstein's now
4 retired, so are or were certainly excellent judges, but it's
5 an argument that's been made to me that I don't think was
6 made to them.

7 MR. GOLDMAN: Well, I would point out first that
8 the Debtor has not argued for any back in their brief --

9 THE COURT: But AHC did. The --

10 MR. GOLDMAN: Yes.

11 THE COURT: -- the Ad Hoc group of governmental
12 entities.

13 MR. GOLDMAN: I would -- I would respond that I
14 don't think "so" would change the idea that was expressed in
15 the Dietech and the Quigley cases, that in the Chapter 7,
16 those creditors would be retaining on account of their
17 claim, rights against third parties. That plan proposes two
18 weeks.

19 So, I would argue that the single word "so" would
20 not alter the analysis that was articulated in both of those
21 cases that where they distinguished between the Chapter 13
22 test, which doesn't include the word "retain," to conclude
23 that what they would retain in Chapter 7 is the right to go
24 against third parties who are proposed to be released.

25 THE COURT: Okay. Well --

1 MR. GOLDMAN: That's -- that's fair.

2 THE COURT: -- again, I -- as I said to Mr.

3 Huebner, I'm not sure ultimately this matters because I

4 think consistent with the section of the Quigley case as

5 well as other cases that have considered plans that have

6 sought to impose a third-party release or injunction, it is

7 incumbent on the Court to look at what's being given up

8 under the plan in terms of evaluating that request, whether

9 or not it's under 1129(a)(7), too.

10 So, I just wanted to note the issue. I -- to me,

11 I can't ignore the word. I will note also that "claim" is

12 not defined as a claim against the debtor in 1015 of the

13 Code. On the other hand, it would, I think, open up a

14 fairly large can of worms if courts started to look at all

15 sorts of recoveries from third-party sources, that one would

16 get under it in Chapter 7 as a mandatory exercise for

17 confirming a plan.

18 But maybe it's -- maybe it's academic given the

19 larger point that I think controls here, which is that I

20 have to look at -- beyond the 9019 analysis because that

21 really applies to the Debtors' estate and creditors -- what

22 it is that the injunction of third-party claims would

23 deprive the objectors of, or alternatively, whether it's

24 actually a fair deal for them.

25 MR. GOLDMAN: May I proceed, Your Honor?

1 THE COURT: Sure. Yes. Go ahead.

2 MR. GOLDMAN: Okay. So, as the Dietech court
3 observed, according -- from an earlier Southern District
4 case, the command of Section 1129(a)(7)(ii) is perhaps the
5 strongest protection creditors have in Chapter 11.

6 I think Mr. Huebner's argument that because 80 or
7 90 percent of the states have accepted the Plan, should
8 somehow mean that the best interest test is satisfied.
9 Well, if you go with the majority or super-majority of
10 creditors who are voting in favor of the Plan, that
11 essentially wipes out the purpose of the best interest test,
12 which was -- is to protect the dissenting creditors. It's a
13 totality to say that because the majority voted yes, they
14 must be right.

15 That is a sophistic, S-O-P-H-I-S-T-I-C --

16 THE COURT: Right.

17 MR. GOLDMAN: -- argument.

18 THE COURT: Right. The purpose of the test is --

19 MR. GOLDMAN: So --

20 THE COURT: -- really to protect the minority on
21 your -- I understand that.

22 MR. GOLDMAN: Fine. And the Plan proponent bears
23 the burden of proof to demonstrated with evidence that the
24 test has been satisfied. They can't shift to the burden to
25 the dissenting creditor, as suggested by Mr. Huebner, to

1 prove what it would recover on its direct claims. It's the
2 Debtors' burden of proof on best interest.

3 And just to remind the Court, the dissenting
4 creditors here are California, Connecticut, Delaware, the
5 District of Columbia, Maryland, New Hampshire, Oregon, Rhode
6 Island, Vermont, and Washington.

7 And the best interest of creditors requires a
8 comparison of what those dissenting creditors would receive
9 under the Plan, and what they were to receive in a
10 hypothetical litigation. It doesn't say what all of the
11 Class 4 creditors would receive under the Plan in relation
12 to what they all would receive in a liquidation. The
13 analysis is focused on the dissenting creditors. And for
14 that first part of the test, the Debtors did not even
15 present evidence of the amount the dissenting creditors
16 would receive under the Plan.

17 Now, although Mr. DelConte testified that it would
18 be a multiplication exercise --

19 THE COURT: No, I actually have --

20 MR. GOLDMAN: -- based on the allocation --

21 THE COURT: -- I actually have a chart of what
22 each of those states would receive under the Plan and I
23 don't think that's controverted.

24 MR. GOLDMAN: Well, my point is, they didn't
25 present evidence of that, Your Honor, prepare a chart. It -

1 - like --

2 THE COURT: I mean, I believe it's -- I believe
3 it's in the record. I -- we -- I didn't -- we didn't make
4 it up.

5 MR. GOLDMAN: Be that as it may, they didn't
6 present it in their brief as to what we would receive or in
7 argument to make the comparison of what we would receive in
8 a liquidation.

9 And on the other side of the equation --

10 THE COURT: Oh, I'm sorry. I thought you -- I
11 don't have a specific number of what they would receive in a
12 liquidation. I do have what they would receive under the
13 Plan, at least an estimate of what they would receive.

14 MR. GOLDMAN: That's what I meant. That's what I
15 meant, so I acknowledge that.

16 THE COURT: Okay.

17 MR. GOLDMAN: All I'm saying is there wasn't --
18 that wasn't presented by Mr. DelConte, it was presented in
19 the Debtors' brief as to what we would receive, to make the
20 comparison.

21 And on the other side of the equation, because in
22 Chapter 7 there would be no third-party releases, it's our
23 contention there must be some proof of what the dissenting
24 states would receive if they were permitted to go forward
25 against the Sacklers. And yet, no such proof was provided.

1 Mr. DelConte testified that no attempt was even
2 made to estimate or project what the dissenting states would
3 recover on claims against the Sacklers. That was at the
4 8/13 Transcript, Page 61. And that his liquidation analysis
5 did not include the value for any of the direct claims of
6 Purdue creditors against any of the Sacklers. Ant that was
7 at Page 58 of his testimony.

8 Indeed, the Debtors did not even attempt to
9 ascertain university -- universal creditors in these estates
10 that are asserting claims against the Sacklers. We
11 acknowledge that Mr. DelConte, at Page 57 of his testimony,
12 that failure stands in stark contrast to the evaluation that
13 was done in the Dietech case by Alex Partners. He should
14 have at least attempted to identify and put a settlement
15 value on the consumer claims that would have survived in
16 Chapter 7 case in Dietech, and could have been asserted
17 against the buyer of the consumer credit agreements there.

18 The Debtors attempt to excuse their lack of proof
19 with the argument that the claims are speculative but not
20 capable of estimation, that is not supported by anything
21 other than the Debtors' counsel's say-so. The same argument
22 was made by the debtors in Dietech and it was squarely
23 rejected.

24 THE COURT: Well, it --

25 MR. GOLDMAN: There, the --

1 THE COURT: -- it was made, but obviously it was
2 rejected because they'd actually quantified them.

3 MR. GOLDMAN: They tried -- they tried to quantify
4 them, and the court held that that was not acceptable proof.
5 And the consumer claims there that would have been
6 extinguished if --

7 THE COURT: But even as -- even as quantified,
8 there was no countervailing benefit at all in return for
9 them.

10 MR. GOLDMAN: In the sense of -- I'm not sure I
11 understand what Your Honor means.

12 THE COURT: There was no showing of any real
13 benefit to the -- to the consumers that were giving up those
14 claims other than the \$5 million. So, you had \$252 million
15 versus \$5 million.

16 MR. GOLDMAN: Well, I understand that, Your Honor,
17 my -- my point is that the claims -- the consumer claims --
18 that would have been extinguished under the Plan by the 363
19 Sale of the consumer credit agreements, would have been
20 available to assert against the buyer in Chapter 7, a buyer
21 of the consumer credit agreements. And they were based on
22 very attenuated claims.

23 There were account misstatements, claims --
24 wrongful -- claims of wrongful foreclosure, unfair
25 collection practices and the like, and they gave rise to

1 potential claims under the Real Estate Settlement Procedures
2 Act, the Truth in Lending Act, Fair Credit Reporting Act,
3 and Fair Debt Collection Practices Act. All those claims
4 were unliquidated.

5 And based on the analysis done by Alex Partners,
6 3,900 proofs of claim were identified as being consumer-
7 related, and 265 proofs of claim having been matched to
8 pending litigation. No such analysis was done in this case.

9 THE COURT: But in -- in Dietech, Dietech and its
10 predecessor had a history of dealing with these types of
11 claims and with settling them, which was a basis for Alex
12 Partners' analysis.

13 What I have here is something more attenuated. I
14 have the settlements from the 2007 period. I have the
15 settlement with the State of New York where the Sacklers
16 themselves paid \$75,000. I have the settlement more
17 recently with the State of Oklahoma, where they paid \$75
18 million. And I have a number of complaints, some of which
19 have survived motions to dismiss, although largely on
20 procedural grounds -- those motions being made largely on
21 procedural grounds, such as noncompliance with federal law,
22 preemption, or jurisdiction grounds. So, you just don't
23 have the same type of track record here.

24 MR. GOLDMAN: You don't have the same type of
25 track record, but I would point out that in neither of those

1 cases did the court hold that some sort of settlement
2 history was a prerequisite to, you know, the finding that
3 they weren't speculative or remote.

4 THE COURT: That's true.

5 MR. GOLDMAN: There was a settlement --

6 THE COURT: But they -- but they did rely on the
7 settlement history.

8 MR. GOLDMAN: Oh, well, it's -- it would be hard
9 to dispute that, Your Honor, and I do agree. However, I
10 would point out in Dietech that the settlement history was
11 only for about a year and a half, and it didn't include that
12 many claims. That's not to say that because there is no
13 settlement history, by necessity, claims are speculative and
14 remote.

15 Remember, the Debtors, as Mr. Huebner pointed out
16 in a prior hearing, there were a total of 18 experts that
17 were hired in this case, albeit not all of them by the
18 Debtor. And I find it more than curious that on this one
19 issue, given all those experts and how creative the Debtors
20 have managed to be in this case, didn't present any expert
21 even on the issue of whether the claims themselves were
22 speculative and incapable of estimation. They're just
23 asking you to make that conclusion based on their say-so.

24 Mr. DelConte was not an expert on estimating
25 claims or affixing damages. He said -- he gave the party

1 line, that, well, we just didn't feel comfortable that we
2 could estimate these claims. But he wasn't the expert that
3 was hired to do it. In fact, he acknowledged that the
4 Debtors didn't hire an expert to do that or even to tell the
5 Court that they weren't estimable.

6 THE COURT: Fair point.

7 MR. GOLDMAN: I just, again, point out and I
8 recognize the difference on settlement history, but in
9 Pfizer -- or Quigley as well, the claims were unliquidated
10 and disputed, albeit there was some history for the court to
11 evaluate. But again, my point is, it's not a necessary
12 condition. No court has held that. And in Dietech, none of
13 the consumer claims at issue have even gone to judgement.

14 I would also point out that --

15 THE COURT: But there had been -- but there had
16 been other consumer claims that had gone to the stage where
17 they were settled.

18 MR. GOLDMAN: Correct. And my point is they
19 hadn't gone to judgment.

20 THE COURT: These particular ones, yeah.

21 MR. GOLDMAN: Yes, yes.

22 THE COURT: But I think there were similar claims
23 that had gone to judgment as well as some being settled. I
24 mean, frankly, I think they're some that have been ruled on
25 in the Southern District Bankruptcy Court.

1 MR. GOLDMAN: Your Honor, I'll defer -- I'll defer
2 to you on that. I just -- I don't -- my -- I thought that
3 based on the settlement data they had, that none had gone to
4 judgment, but I'm not completely sure about that --

5 THE COURT: Okay.

6 MR. GOLDMAN: -- now that Your Honor has raised
7 the point.

8 The fact -- it's ironic that the fact that no
9 settlement and litigation data is available here is the
10 result of the Debtors' own doing. I mean, the states have
11 been prevented from continuing with actions against the
12 Sacklers for almost two years by the preliminary injunction,
13 that the Debtors were asked -- weren't even successful in
14 getting. They shouldn't be able to turn around now and use
15 that standstill to argue that the claims can't be valued
16 because there's no settlement data.

17 But if the states had been permitted to go
18 forward, we may very well have had some settlement data or
19 judgments in either direction for the Court to make a
20 decision on this task.

21 THE COURT: But I guess that goes to the other
22 point, which is the primary point I think that the Debtors
23 have been making, which is they have focused only lightly on
24 the strength of the states' claims against the Sacklers and
25 very heavily on the recovery that the states would have on

1 those claims.

2 MR. GOLDMAN: They haven't focused.

3 THE COURT: They have focused primarily on the
4 recovery that the states would have on those claims.

5 MR. GOLDMAN: Yes. And I -- I will get to that.

6 THE COURT: Okay.

7 MR. GOLDMAN: Point, Your Honor. But before I do
8 that, I'd like to address the argument that they make in
9 their brief that in order for it to be true that holders of
10 all third-party claims would be better off in a liquidation
11 because of the value of claims released under the Plan, the
12 aggregate recovery due in those claims, it would be -- it
13 exceeds \$4.8 billion.

14 Now, Mr. DelConte confirmed, the Debtors made no
15 attempt to even ascertain the universe of creditors that are
16 asserting claims against the Sacklers. The Debtors are
17 simply assuming that every creditor in the case would assert
18 claims against the Sacklers and that all those claims would
19 be completely homogenous, would not vary in their merit, or
20 type of claim, and that is simply not a valid assumption.

21 They did not do the analysis that was done in
22 Ditech to see which creditors were asserting claims against
23 the Sacklers, and I'm not aware of any proof of claim in the
24 case that was asserted against the Sacklers as opposed to
25 the Debtor.

1 Second, the best interest test requires looking at
2 what the dissenting creditors would receive on their direct
3 claims. We'll recover, I acknowledge recovery, and now with
4 the holders of all third-party claims, which the Debtors
5 haven't even identified, would receive, in a hypothetical --

6 THE COURT: But I think the point is the dilutive
7 effect of the claims that actually are, we know, just leave
8 it to that. The claims of the individual states filed
9 against the Debtors, and I think we know a fair number of
10 the governmental entities, non-state governmental entities,
11 as well as the liquidated value of those claims.

12 I think their point is that even if you confine it
13 to that aggregate amount, there would be an enormous
14 dilutive effect, not that you would measure what the others
15 got, but that the effect of their pursuit of those claims
16 would dilute the objector's recovery, along with various
17 other things too, like the cost and delay.

18 MR. GOLDMAN: I do understand the point, but I'm
19 not sure that it's a valid assumption that every state is
20 asserting claims against the Sacklers; not all states did
21 file claims against the Sacklers. I don't think any effort
22 was made to identify which complaints were actually filed.
23 And if they weren't filed, which states intended to make
24 claims against the Sacklers, but not because of the Chapter
25 11 filing in September of 2019 and the preliminary

1 injunction.

2 So my point is they simply haven't been
3 identified. They've asked Your Honor to assume that
4 everyone would make claims against the Sacklers, but there
5 really is no evidence that all of them would is my point.

6 And as to the competing claims of the estates
7 against the trust, I would submit that analysis ignores that
8 if just three states get judgments against one or more of
9 the Sacklers, they could be put into involuntary bankruptcy
10 where the interest in their offshore trusts would be
11 susceptible to becoming property of their estates. No
12 analysis was done on the effect of a potential bankruptcy
13 filing and what that would mean in terms of their interests
14 in the trusts and whether the estates' claims against the
15 trust would prevail or have priority over those interests
16 that could possibly become property of the estate.

17 THE COURT: Can we just --

18 MR. GOLDMAN: There's no --

19 THE COURT: I think you're making two points there
20 and I want to just make sure I understand them.

21 There would be estate claims that would be
22 asserted by Purdue in a liquidation against the trust,
23 fraudulent transfer claims. We do have expert testimony on
24 that, and as well as the recoverability of that. Parties
25 have said that they would dispute it if, in fact, there was

1 litigation, but they haven't disputed it in this case.

2 Under the stipulation, there's no adverse consequence to
3 them for having not disputed it.

4 And then I think you're saying that in a Sackler
5 parties bankruptcy, the assets of the estate or his or her
6 estate would become property of the estate. But there is
7 testimony, I believe, that most, if not all, of those trusts
8 are spendthrift trusts, which you would have to adjudicate
9 in, I believe, Jersey.

10 MR. GOLDMAN: Well, to the extent those trusts are
11 self-settled with monies from the settlors, I think they're
12 vulnerable to attack. The cases cited by the Debtor in its
13 brief about the Greenwich v. Tyson case in Connecticut, they
14 all presume that the trusts were not self-settled. Self-
15 settled trusts are not given protection from creditors.

16 So I would just make the point that they could be
17 vulnerable to that type of challenge in an individual
18 bankruptcy. But even getting beyond that, you know, the --

19 THE COURT: But again, there would be a factual
20 determination of that in a Sackler bankruptcy, an individual
21 Sackler personal bankruptcy, but then you'd have to enforce
22 that judgment against the assets of the trust, which I think
23 mean you'd have to go through Jersey. And when I say
24 Jersey, I don't mean the state of New Jersey, I mean the
25 bailiwick of New Jersey.

1 MR. GOLDMAN: I understand. I understand what you
2 mean.

3 THE COURT: Right.

4 MR. GOLDMAN: And I acknowledge that, Your Honor.
5 But I know the states, the states would be poised to do that
6 I'm sure.

7 THE COURT: Well, they might well be poised, but
8 they didn't cross-examine Mr. Cushing on their ability to
9 actually move from being poised to collecting.

10 MR. GOLDMAN: Well, I'm merely pointing out that
11 that analysis on the bankruptcy aspect of this was not done
12 in terms of an individual bankruptcy of any of the Sacklers
13 that might suffer judgments from the states.

14 And beyond that, I'm presuming since they would be
15 themselves the subject of Chapter 11 cases, their post-
16 bankruptcy income would also become part of their estates
17 and, you know, going forward.

18 So the trust would not be the only source of
19 recovery. You'd also have their interest in the IACs that
20 would come into their bankruptcy estates and potentially --
21 well, basically, all of their assets and interest in
22 property, and no analysis was done on that.

23 And I think that it's important that it had to
24 have been done because in the absence of a confirmed plan
25 and if the states are committed to go forward, we would

1 maintain it's likely that the estates would obtain judgments
2 against one or more of the Sacklers and is a likelihood that
3 they could be subject to a bankruptcy proceeding.

4 And I would just also note that this idea that the
5 disclosure statement and the assumption that these claims
6 are just speculative and not capable of estimation shouldn't
7 be held to satisfy their burden of proof on the best
8 interest of creditors test, given its importance to
9 dissenting creditors like the ones we have here.

10 As the Bankruptcy Court stated in In re. Mcorp,
11 137 B.R. at 228, a proposed plan of reorganization may not
12 be confirmed where the evidence is not sufficient on which
13 to base an independent determination that the proposed plan
14 is in the best interest to creditors. And I submit that was
15 not done here.

16 Just to briefly address a few points that Mr.
17 Huebner made. I don't want to forget those.

18 I viewed his point that we can't prove the
19 authority that we can prevail on our claims or get a
20 recovery as effectively shifting the burden of proof on the
21 best interest of creditors test. It's not our burden to
22 prove what we would recover. They made this point in their
23 brief that we didn't submit expert testimony on what we'd
24 recover. It's not our burden of proof.

25 On this issue of the taxes that Connecticut and

1 other states may have received from the tax distribution, I
2 think is a complete red herring. Each of the states was
3 immediate transferee of that money. So if we took in good
4 faith and without knowledge, we're protected under Section
5 550, and there's no colorable claim that the states didn't
6 take tax money in good faith.

7 With that, Your Honor, I --

8 THE COURT: So the states -- I mean, I think -- I
9 don't want to really -- I think that the personal injury
10 claimants would say, well, who was supposed to be regulating
11 Purdue if not its home state and the federal government, the
12 two of which got the most taxes. So I guess that comes down
13 to whether a failure regulation warrants any sort of either
14 presumption of knowledge as to the taxes or some basis to
15 subordinate claims.

16 MR. GOLDMAN: I understand the theory, Your Honor.
17 I'll just say that is quite a stretch.

18 THE COURT: Well, I think it would be an argument.
19 Let's leave it at that.

20 MR. GOLDMAN: I'm happy to leave it at that, Your
21 Honor.

22 THE COURT: And personal injury lawyers, I'm sure
23 wouldn't hesitate to make it; whether it'd win or not is
24 another story.

25 MR. GOLDMAN: With that, Your Honor, I'll give the

1 floor to any rebuttal.

2 THE COURT: Okay. Thank you, Mr. Goldman.

3 MR. GOLDMAN: Thank you, Your Honor.

4 MR. HUEBNER: Your Honor, I think I'll be
5 relatively brief, but there are some things that were said
6 that -- there were quite a few things that were said
7 factually, but I think it's worth letting everybody know it.

8 And, you know, this is actually a much more
9 important conversation that he raised than just best
10 interests because in many ways, this is the heart of
11 everything, which is why are so many people in favor of
12 doing this as opposed to its alternative. And so, I
13 actually embrace a demanding Third Circuit standard that
14 this is the fairest, best outcome under extraordinary
15 outcomes, which is why we didn't actually brief that Ditech
16 don't really apply, someone else did, because we're fine
17 within the plan.

18 And here you asked me a few days ago during cross-
19 examination to not get into conceptions of justice and
20 fairness, but let's talk about a few things that are more
21 directly relevant to the statute. Number one, Your Honor,
22 is you've heard me say many times, I have never once ever
23 defended Purdue's past conduct or the Sacklers. We arrived
24 in March 2018.

25 But the facts are that it was not the Sacklers who

1 paid \$75,000 to New York State; it was Purdue. And in
2 Oklahoma, the Sacklers were not even sued; Purdue was sued.
3 And Purdue paid to settle that for a variety of reasons and
4 the Sacklers were not parties to the consent judgment and
5 made a voluntary contribution of \$75 million. Might those
6 suits have expanded and were they thinking lots of complex
7 things when they settled? They are not my clients and never
8 have been, so I don't know and it's not my business.

9 But the facts are that there is no track record, I
10 believe, which is part of what angers so many people, of the
11 Sacklers actually having had judgments entered against them.
12 I believe there are none.

13 Your Honor, the first point -- and I appreciate
14 the references both to sophistry and to tautologies -- are
15 simply not correct. In many cases, an individual member of
16 the class is differently situated and has a third-party
17 claim that many others might not have. They might be
18 properly classified in the same class vis-à-vis the Debtors
19 but have a unique opportunity to recover more than in a
20 liquidation because they have third-party claims that could
21 be pursued that the plan would take away.

22 And if those claims are not speculative and
23 reasonably capable of estimation, which is the best possible
24 law for Mr. Goldman's clients, then they have a real
25 argument.

1 Here, it is absolutely appropriate to take
2 judicial notice of 50 states, 48 states, 38 states that I
3 will argue in more detail in a few minutes are, in fact,
4 virtually identically situated, have made the same choice.
5 So, in fact, it's neither a tautology nor is it sophistry.

6 Number two, Your Honor. We fully accept that it
7 is our burden, but the Court has to consider everything
8 including what the objectors bring as part of raising an
9 objection and one page in a brief with no claims that they
10 would actually do better and nothing to suggest it. Even
11 now, no one has ever said I know a better way where
12 creditors get more, I know a better way where victims get
13 more redress. If someone thought that was really the case
14 after \$500 million in legal fees, maybe they should have
15 just said it.

16 Your Honor, with respect to burden, let's talk
17 about the facts in the record. The allocation chart among
18 the states about what each one is getting goes to, like,
19 nine decimal places. I'll read one example: Alabama,
20 \$1.6579015983 percent. The Debtors had no involvement in
21 that. The states worked it out amongst themselves and
22 decided how much each one was getting and then handed it to
23 us and said please staple it to the documents and file it on
24 the docket, which we did at No. 3232, Exhibit C, Schedule 3.
25 Don't take it from me. Take it from them.

1 Then there's Mr. DelConte's testimony under oath
2 in these proceedings that perhaps the objectors did not
3 remember. We're all dancing faster than anyone should have
4 to. So I quote, this is from the transcript on August 13th
5 at Page 72, beginning at Line 9. The questioner was Mr.
6 Kaminetzky. The witness under oath was Mr. DelConte.

7 "Q: And could you tell the Court why is it that
8 you didn't account or put a value on those causes of
9 action?" This is in response to the questions that he got
10 about direct claims.

11 "A: We did not. We determined that we couldn't
12 adequately estimate the value of those potential claims, you
13 know, based on the fact that, as I testified before and as
14 laid out in the disclosure statement, the fact that there's
15 a number of different causes of action that various third
16 parties could have against the shareholders, as well as a
17 number of defenses that the shareholders could have against
18 those particular causes of action and the fact that none of
19 these causes of action had been taken to judgment to date.
20 We didn't think that we were accurately able to estimate
21 what the total value should be, so we determined that we
22 should not include that in the liquidation analysis."

23 He testified under oath in a Federal Court that
24 the claims were not estimable.

25 THE COURT: But he is not --

1 MR. HUEBNER: (crosstalk) requires --

2 THE COURT: He is not a lawyer, and Mr. Goldman's
3 point is that he thinks you could have provided a lawyer who
4 would testify as to why it would be speculative. What is
5 your response to that?

6 MR. HUEBNER: Your Honor, apologies, Your Honor.
7 I'm actually going to get to that with cites and more in a
8 few moments if that's okay with you as part of the flow.

9 Your Honor, the next issue is that, you know, with
10 all due respect, he actually ignored every single one of my
11 11 points, right, and it's basically now agreed, as the
12 record makes clear, that the five to six to seven billion
13 dollars of Debtor value is gone in a liquidation.

14 What he did was he said there's no evidence of
15 what we get in a liquidation; that's false. In two of the
16 three scenarios in the declaration, Class 4 creditors share
17 zero. If Connecticut's percentage is 1.3490069542 of zero,
18 it is still zero.

19 The third scenario, which is the only one where
20 they would get anything, they share \$699 million, compared
21 to the five to six to eight billion dollars that states
22 alone are sharing under the plan. I can't get anyone -- I
23 couldn't get a bevy of supercomputers to testify what
24 Connecticut would likely end up with out of \$699 million.
25 When all the intercreditor deals were voided, Mr. Shore

1 moved to subordinate their claims. We had \$400 trillion --
2 trillion of projected non-state claims against their 2.156
3 trillion.

4 To say that I need a lawyer under oath to say
5 nobody could possibly in the universe credit a material
6 recovery that Connecticut in a liquidation I think is not
7 what -- that's arguably sophistry. I mean, the facts are so
8 clear, and they're not arguing to the contrary. They're
9 just saying we don't have to prove anything. We think we've
10 met our burden by miles.

11 And let me keep explaining why, Your Honor. Your
12 Honor, we sort of covered this and, you know, it's not
13 curious that there's no expert. There's no expert because
14 it's so obvious and so unassailable that if everyone chases
15 the Sacklers -- and everyone is everyone -- it's unknowable
16 what any individual creditor gets.

17 Think about what Mr. Goldman had to argue. Oh,
18 maybe many of the states won't sue the Sacklers. They'll
19 just say, you know, even though we're going to get nothing
20 from this case because the Debtors melted down, the company
21 was destroyed, and we couldn't get that value and we lost
22 PHI, we'll let our brother and sister states go through the
23 Sacklers and we'll just stay home and wish them the very
24 best while our citizens get zero, zero from the Sacklers,
25 zero for abatement.

1 I mean, it's not -- it's just so far beyond the
2 pale to have to respond to an assumption. I mean, I could
3 ask Mr. Eckstein to speak after me and confirm that there's
4 no state anywhere that's going to allow others to sue the
5 Sacklers while they do nothing. They all have identical,
6 similar, analogous, different causes of action. The only
7 reason the Sacklers are named in some complaints and not
8 others is because of the Chapter 11, which we'll discuss in
9 a minute.

10 In fact, you know what? Let's discuss it right
11 now, because it's just so not right that almost two years
12 in, we're still hearing what is truly -- and I don't mean
13 this unkindly -- a canard about the PI blocking information
14 flow.

15 So let me remind everybody. The preliminary
16 injunction was supported by the Official Committee of
17 Unsecured Creditors on behalf of everybody as the statutory
18 fiduciary appointed by the Department of Justice to
19 vindicate all of Purdue's creditors as best they know how.
20 They were supported by the AHC.

21 THE COURT: If I could interrupt. I think Mr.
22 Goldman's point was not about -- he was not saying there was
23 a lack of information about the Sacklers or claims that
24 might be asserted against them.

25 I think what he was saying is that they -- certain

1 states at least would have gotten a judgment but for the
2 injunction and, therefore, the claims could be -- the face
3 amount of the claims could be treated as something that
4 there is evidence on.

5 MR. HUEBNER: So, Your Honor, that's exactly where
6 I was about to go.

7 THE COURT: Okay.

8 MR. HUEBNER: I was first noting, because people
9 keep implying that the injunction was somehow put in place
10 for the benefit of the Sacklers --

11 THE COURT: Well, I don't think Mr. Goldman was
12 doing that.

13 MR. HUEBNER: -- and wanting to be farther --

14 THE COURT: I don't think he could because that's
15 not -- he wasn't doing it and he couldn't have done it
16 because it's not --

17 MR. HUEBNER: Correct.

18 THE COURT: -- the fact.

19 MR. HUEBNER: So now let me address the actual
20 point.

21 THE COURT: Okay.

22 MR. HUEBNER: I agree, and it was both nothing and
23 too much at the same time. As Your Honor might remember the
24 state of Washington actually said when reading the
25 injunction, please let just us proceed to trial because

1 we're very far along and we think it would be helpful.

2 You've never heard me ever dispute the strength or
3 validity of any individual claimant's claim against the
4 Sacklers. The problem is one creditor winning against the
5 Sacklers only supports the likelihood that all creditors
6 would win against the Sacklers, and if all creditors win
7 against the Sacklers, no individual creditors' recovery is
8 knowable. But what is knowable is that four, five, six,
9 seven, eight billion dollars that is already on the table
10 evaporates and creditors have to do better trying to share
11 only what they get against the Sacklers in that scenario,
12 and that's my argument.

13 You know, the notion of Mr. Goldman having to say,
14 you know, only a small number of states might sue them, it's
15 just so -- I don't even know what to say in response to
16 that. We can line up 100,000 creditors right now at the
17 podium to say I swear I will sue the Sacklers along with
18 suing Purdue to recover for the acts of this company and its
19 owners, and everyone on the planet knows it.

20 Your Honor, Mr. Gold then -- Mr. Goldman, I'm so
21 sorry. Mr. Goldman then sort of testified and sort of
22 speculated that in a subsequent Sackler bankruptcy, if that
23 happened, we would all do better because maybe they go into
24 Chapter 11 and maybe their trusts would be brought in and
25 maybe they're not self-settled trusts and maybe we could get

1 all their assets.

2 Well, here's my answer to that. With all due
3 respect to Mr. Goldman, who is in the 1/500th of 1 percent
4 of our creditors who objected to confirmation, many of us
5 have spent years figuring out how to get the best deal and
6 analyzing the all risks and rewards.

7 And here's the testimony, which is in evidence,
8 from Mr. Atkinson, whose declaration is extraordinarily
9 important and attaches the UCC letter which went out to all
10 creditors and is extraordinarily important. Paragraph 11:

11 "At the outset of these Chapter 11 cases, Akin and
12 Province commenced an investigation on behalf of the
13 Official Committee of among other things, the claims that
14 could be asserted against the Sacklers and related entities
15 on behalf of the Debtors' estates. This also included an
16 investigation concerning the likelihood of success of any
17 potential estate claims against the Sacklers and related
18 entities, the likely damages associated with such claims,
19 and the likelihood of collecting on any judgment rendered in
20 favor of such claims."

21 Everyone looked at collectability. What does Mr.
22 Goldman think we were all doing for the last three years?
23 This is a huge part of what people were doing, people like
24 the AHC and the UCC and the PIs and the special committee
25 thought about all of these thing. So like an intellectual

1 colloquy about what might happen in a hypothetical Sackler
2 bankruptcy which Jersey law and Connecticut and Maryland
3 law, this is the work that was done for tens of thousands of
4 hours and all the people suing Purdue and suing the
5 Sacklers.

6 And nobody but this one objection apparently
7 believes that there's a better alternative, and this
8 objection doesn't really believe it either because you'll
9 notice you never heard anybody say, and you certainly didn't
10 hear Mr. Goldman say, I actually think my clients would do
11 better. Nobody could say that, not under oath and not in a
12 signed pleading.

13 I have tremendous respect for how seriously Mr.
14 Goldman takes his signature, and unlike other pleadings in
15 this case, there is nothing in his that an officer of the
16 court should not be comfortable saying, but I think the
17 silences are also important. And ironically, I think that
18 you can take judicial notice of the silences as well.

19 Two final points, Your Honor. In case the record
20 is somehow not clear, I have never ever said that any state
21 would not prevail against the Sacklers. My point is
22 different, and it has always been different, which is we're
23 back to the tragedy of the commons, is that everybody would
24 prevail. And we discussed this or there's a risk and the
25 odds are the same for everybody.

1 And so, Connecticut on its \$50.1 billion claim is
2 likely to prevail. o are 47 or 48 or 42 other states and
3 tens and tens of thousands of other Creditors who suffered
4 similar injury.

5 Finally, it's not really relevant because I said
6 it's Mr. Preis' argument and I'm not making it, but right is
7 right. So let me be very clear. Purdue as you have heard
8 in other context, often in very strong tones, pled guilty to
9 multiple crimes in 2007 and had a corporate monitor in place
10 that many of these states participated in the monitoring and
11 had rights and access to information. Suffice it to say
12 that if the Estate is forced to go in a different place and
13 has to seek fairness in recoveries for all, Mr. Goldman's
14 sort of testimony again about we're a BFP. We have no
15 knowledge, we weren't on notice -- not my theory, not in my
16 pleadings, but that's something that a lawyer can represent
17 to a court and I daresay Mr. Goldman has no facts to support
18 that some day some court might find about who might have
19 been able to stop this years ago. I have nothing further.

20 THE COURT: Okay. All right. Why don't we move
21 on then to the next topic on today's agenda which is the
22 classification argument made by the objecting states other
23 than West Virginia, which frankly, I'm not sure at this
24 point, given the vote, matters that much, but it's on the
25 agenda and I'll hear it briefly for the time that's been

1 allotted.

2 MR. MCCARTHY: Your Honor, for the record, Gerry
3 McCarthy of Davis Polk on behalf of the Debtors. Can Your
4 Honor hear me clearly?

5 THE COURT: Yes.

6 MR. MCCARTHY: So the next item on the agenda, as
7 Your Honor just noted, which I now will address are the
8 classification objections of Washington, Oregon, as well as
9 Connecticut, Maryland, and the District of Columbia. I
10 believe there were also some joinders by California,
11 Delaware, Rhode Island and Vermont.

12 The objecting states contended the plan improperly
13 classifies them with cities, municipalities and other local
14 governments. That objection should be overruled for two
15 basic reasons. First, and most importantly, the Debtor's
16 classification framework is entirely proper. The objecting
17 states arguing to the contrary is simply incorrect.

18 The Court, I know, is more than familiar with the
19 straightforward rules governing classification, the first
20 set forth in Section 1122(a) is that claims or interests may
21 be classified together if they're "substantially similar."
22 The second is that a Debtor has a great deal of flexibility
23 to place similar claims into different classes and can do so
24 as long as there is a legitimate reason for it, but doesn't
25 have to. It's the first of these rules that disposes of the

1 issues here.

2 The claims of the states and municipalities are
3 substantially similar, and thus are properly classified
4 together. As to the initial matter, these claims are all
5 unsecured and thus have an identical relationship to the
6 property in the Debtors' Estate. That alone is sufficient
7 to classify them together.

8 These claims also arise out of the Debtors'
9 production, marketing, and sale of opioid medications. In
10 other words, they arise from the same facts. And although
11 there is no need whatsoever to get this granular, and there
12 may so variation state to state, state and municipal claims
13 also allege many similar theories to recover. For
14 illustrative purposes, one could compare the complaints of
15 Seattle and Washington State at JX79 and JX944 respectively.
16 They both have a certain public nuisance claims under the
17 same statute, Revised Code of Washington Chapter 7.48. They
18 both assert consumer protection claims under the same
19 statute, the Washington Consumer Protection Act.

20 Or one could compare the complaints of San
21 Francisco and California at JX825 and JX947 respectively.
22 They too both assert public nuisance claims under the same
23 statutes, California Civil Code Sections 3479 and 3480, and
24 the two both assert consumer protection claims under the
25 same statutes.

1 In addition to the foregoing, the Class 4 claims
2 were all recovering under and through NOAT, treatment that
3 the states and local governments specifically negotiated for
4 and that arose out of the Phase 1 mediation. It is not at
5 all unusual in Chapter 11 cases that claims arising --
6 claims recovering under the same trust are classified
7 together.

8 All in all, the states had no case that even
9 purports to require, let alone actually holds that states
10 must be classified from other creditors as a general matter
11 because that case doesn't exist. To the contrary, multiple
12 states invariably hold claims in sizeable Chapter 11 cases
13 including for things like taxes and environmental matters
14 and the Debtors invariably had discretion to classify states
15 with other creditors.

16 Here, the states are classified with other non-
17 federal government creditors which is entirely proper under
18 the circumstances.

19 Second, Your Honor, as you mentioned at the onset,
20 the states' objections are essentially moot. If the states
21 were to be separately classified, the class would be an
22 accepting class, overwhelmingly so any way you look at it.

23 Christine Pullo from Prime Clerk testified in
24 Exhibit B of her declaration -- that's at Docket No. 3372 --
25 that of the 48 states that voted on the plan, 38 voted in

1 favor and 10 voted to reject. That's 79.17 percent of the
2 states that voted to accept. The number stays basically the
3 same if one equates the District of Columbia and other U.S.
4 territories. In that case, Ms. Pullo testified 79.25
5 percent of the states voted to accept the plan. And that's
6 Footnote 5 of Ms. Pullo's declaration.

7 If we were to count by population, one would reach
8 approximately the same results as Washington concedes in
9 Paragraph 67 of its objection and Connecticut concedes in
10 Paragraph 63 of its. The states voting to reject the plan
11 account for roughly 20 percent of the U.S. population.
12 That's a number that doesn't really vary if you include the
13 U.S. territories.

14 If one were to go by states on proof of claim, you
15 would again reach the same result as Washington and
16 Connecticut concede in those two paragraphs. And if we were
17 to count by the percentage of allocations each state
18 received from NOAT, one could reach approximately the same
19 result too.

20 For all these reasons, Your Honor, the objecting
21 states classification objection should be overruled. It
22 shouldn't pass without mention that the objecting states
23 evoke a number of irrelevant legal doctrines that they
24 believe demonstrate that their claims are different in class
25 from those of local governments. These certain notions of

1 state sovereignty and a so-called Dillon Rule. Suffice it
2 to say that none of these doctrines in any way mandate
3 separate classification here.

4 I will now turn the virtual podium over, unless
5 Your Honor has any questions, to Mr. Maclay who represents
6 the Multi-State Entity Group and who I understand will
7 address some of the points that I just mentioned briefly.

8 THE COURT: Okay, that's fine, thank you.

9 MR. MACLAY: Thank you, Your Honor, Kevin Maclay
10 for the Multi-State Governmental Entities Group. Cognizant
11 of Your Honor comments, I will keep this argument brief.

12 Your Honor, despite the fact that local
13 governments have strong claims that they've expended
14 significant efforts in pursuing opioid defendants, including
15 Purdue, despite the fact they have suffered substantial harm
16 and despite the critical role that local governments play in
17 abatement efforts, including under the proposed plan here,
18 objecting states seek to challenge the plan's
19 classifications of the non-criminal domestic governmental
20 claims in Class 4.

21 Your Honor, just to make a very important
22 overarching point, local governments are at the front lines
23 of the opioid crisis. If you're in your local community and
24 you call 911, Your Honor, whether it's because of the
25 criminal emergency related to opioids or a medical emergency

1 related to opioids, the person who comes, Your Honor, is a
2 local policeman, a local firefighter, a local county
3 hospital member, et cetera.

4 It is the local governments who brought most of
5 the claims against the Debtors prepetition as set forth in
6 the Debtors' docketed filing at 718 earlier on this case and
7 it is a clear fact, as has been noted by many of the cases
8 cited to in our brief, that cities and counties and other
9 local governmental entities have numerous claims including
10 for increased healthcare costs, increased foster care costs,
11 increased crime-related costs, info, and tax revenue. And a
12 number of cases, such as the City of Surprise case, Your
13 Honor, lay this out.

14 Secondly, Your Honor, it is surprisingly absent
15 from any of the objections filed by the objecting states any
16 mention of the Home Rule Doctrine. They mention Dillion's
17 Rule which has been largely superseded as a point of matter
18 by the nearly ubiquitous entry into the Home Rule Doctrine
19 by almost every state and this is laid out quite cogently,
20 Your Honor, in our brief in the dispatch of the City of New
21 York versus Beretta Corp, which is the District Court for
22 the Eastern District of New York.

23 For example, in that case, the court reasoned that
24 precluding the City of New York from bringing a suit aimed
25 at redressing the problem of gun-related violence would

1 interfere with its authority to promote the safety and well-
2 being of its inhabitants. It is quite clear, Your Honor,
3 that local governments have both the duty and the authority
4 to pursue defendants of mass tort-related incidents
5 including opioid defendants. And the record is replete with
6 examples of that.

7 For example, Your Honor, if you were to look at
8 Paragraph 20 of the MSGE Group reply is support of plan
9 confirmation, we list a litany of cases demonstrating that
10 local governments have standing to bring such claims and in
11 Paragraph 16 to 19 and 21 to 24, we have another litany of
12 cases demonstrating the survival of motions to dismiss by
13 those same governmental entities.

14 It is also clear, Your Honor, that very recently
15 in Tennessee, nine counties and eighteen cities and towns
16 reached a tentative 35-million-dollar settlement with Endo
17 Corporation, another opioid defendant, on July 22nd of 2021.
18 And in three other state courts, Your Honor, California, New
19 York, and West Virginia, county and city plaintiffs are
20 either currently in trial or have recently concluded trial
21 and are waiting verdicts seeking billions of dollars in
22 damages.

23 And, of course, as the Debtor's counsel aptly
24 noted, Your Honor, it is, of course, true that under the
25 proposed plan, cities and counties are part of the abatement

1 efforts and a very important part of the abatement efforts
2 set forth in the plan that we seek confirmation of here
3 today.

4 And, of course, one final point, Your Honor, the
5 parens patriae argument made by the objecting states is
6 overstated first of all, because parens patriae powers do
7 belong to the various states and localities in their various
8 circumstances as our brief pointed out. And secondly, the
9 proprietary actions that all local governments can bring
10 heavy overlap with such parens patriae actions as pointed
11 out also in the authorities that we cited you to.

12 To make a long story short, Your Honor, there is
13 no valid basis to argue the states must be classified
14 separately from local government and the surprising
15 suggestion in the states objections that local governments
16 don't have valuable and important rights to pursue against
17 opioid defendants is just incredibly shortsighted as well as
18 misleading and just flatly wrong. And so for those reasons,
19 Your Honor, we support the Debtors in this particular
20 example of argument as well as overall with the plan. We
21 restate Your Honor that local governments and states, in
22 fact, are appropriately classified together in Class 4.
23 Thank you.

24 THE COURT: Okay. Thanks. I think Mr. Gold is
25 handling this for the objecting states, but I may be wrong.

1 MR. GOLD: Your Honor, you are correct, Matthew
2 Gold, Kleinberg, Kaplan, Wolff and Cohen, representing
3 Washington, Oregon and District of Columbia. Your Honor,
4 can you hear me?

5 THE COURT: Yes.

6 MR. GOLD: Okay. Thank you. I will proceed. I
7 will first note that this oral argument is based on
8 coordination and cooperation with the Attorneys General
9 Offices of Connecticut, Delaware, Maryland, Rhode Island,
10 and Vermont and will be provided in a unified fashion as
11 we've discussed before, Your Honor.

12 THE COURT: Right.

13 MR. GOLD: And, Your Honor, I, too, will be brief
14 in my comments in this regard. First, I want to
15 emphatically say that our argument is not meant -- and we
16 don't believe it is -- in any way to be disrespecting to
17 local governments and the first responders and anyone in
18 that group. We have not been arguing that they do not have
19 claims. We are not arguing that their claims do not, in
20 certain respects, overlap with claims that are brought by
21 the states.

22 But we are arguing is that the states, the
23 totality of the claims brought by the states and the
24 objecting states in particular, contain many significant
25 areas that cannot be brought by the municipalities which

1 supports why the states should be classified separately.

2 For example, in Washington, only the state can
3 seek as a remedy civil penalties with respect to violations.
4 That is not something that can be brought by municipalities.
5 Now particularly with respect to classification, I will
6 first --

7 THE COURT: Have the states asserted a different
8 priority based on that right?

9 MR. GOLD: No, Your Honor.

10 THE COURT: Okay.

11 MR. GOLD: I will first note that it is the
12 Debtors' burden to prove that the classifications were
13 proper. The Debtors have argued that the argued that the
14 classification error can be fixed by going back to the
15 voting results and preparing a count of what the results
16 would have been had the states been in a separate class.

17 And frankly, Your Honor, I find this is amazing.
18 The Debtors waited until after the votes had been cast to
19 rearrange them into a better classification.

20 A classification error cannot be fixed through a
21 hypothetical analysis of how the votes might have been
22 arranged under a different classification. The Debtors
23 certainly cite no cases to support this theory that
24 classification can ex post facto be revised. The disclosure
25 statement certainly did not disclose to the voters that

1 their claims might be rearranged into separate classes for
2 purposes of determining how the plan would go.

3 And, Your Honor, as you, yourself, stated, show me
4 an election where that was done. I'm not aware that that's
5 how elections are handled in this country that the votes can
6 be re-scrambled and realigned if they were not properly
7 counted in the first place.

8 THE COURT: They are counted.

9 MR. GOLD: They are counted.

10 THE COURT: My statement was as to somehow
11 assuming votes that weren't counted. But let me just cut to
12 the chase. I just frankly do not understand this argument.
13 The caselaw could not be clearer that the focus as far as
14 1122 of the Bankruptcy Code is concerned, which refers to
15 substantially similar claims, goes to the right of the
16 claimant against the assets of the estate. So you can,
17 although you don't have to, classify claims based on breach
18 of contract in the same class with claims based on tort
19 because each of them is unsecured and has the same right
20 against the debtor's assets, general unsecured claims. Is
21 there any aspect of your argument that is consistent with
22 that proposition?

23 MR. GOLD: Your Honor, I'm not disputing that the
24 claims as treated in the plan are all general unsecured
25 claims.

1 THE COURT: Okay. So I think you lose. So let's
2 move on to the NOAT allocation.

3 MR. GOLD: I simply --

4 THE COURT: This is just a waste of time, Mr.
5 Gold, and I don't understand frankly -- it's just -- I've
6 read your brief. The only question I had is whether you had
7 some sort of priority claim, which you told me you don't or
8 your clients don't. There's been no attempt to designate
9 any vote in the class as to, you know, being for a claim
10 that is only held by a state, which would be the remedy
11 under the brief's argument that only the states can assert
12 certain types of claims as opposed to a classification
13 argument since concededly there are general unsecured claims
14 held by the other governmental entities. There's no
15 contention of any vote manipulation here given -- and this
16 is where the actual votes, I think, are relevant.

17 So this is just, this argument makes no sense.

18 MR. GOLD: Your Honor, I was simply responding to
19 the argument that the Debtors' had just made and they made
20 in their papers.

21 THE COURT: Well, okay.

22 MR. GOLD: I have one other response to the
23 argument that the Debtors have made in their papers, Your
24 Honor. I will be brief with respect to this as well.

25 THE COURT: All right.

1 MR. GOLD: It relates to feature that the claims
2 were all accorded one dollar votes. We submit that the one
3 dollar claim setup was preposterous on its face. There may
4 well be cases where that is the right approach, but not in
5 this case. While the amounts of the claims might not have
6 been fixed, the one dollar setup lumped together claims that
7 were known to be different and several orders of magnitude
8 different in size. The Attorneys General of the states
9 represent the entire state and are not simply the sum of the
10 municipalities that are contained therein. And by arranging
11 the class and one dollar votes for every party in it, the
12 Debtors were setting up a structure where they knew that
13 they would be able to prevail in the ultimate voting and in
14 a way that was inconsistent with what they had to be aware
15 were the significant differences in the sizes of the claims.
16 We submit that it is improper in this case. I have nothing
17 further to add, Your Honor, unless you have questions.

18 THE COURT: No, I don't. Thank you.

19 MR. GOLD: Thank you, Your Honor.

20 THE COURT: I don't know if the Debtors or the
21 MSGE want to respond on the one dollar point?

22 MR. HUEBNER: Your Honor, I'll hit that one. The
23 answer is very simple. The NOAT allocation and he actually
24 answers a bunch of the sort of points that were made, the
25 NOAT allocation was agreed to among all the states and

1 entities as their Class 4 shared distribution. The one
2 dollar was agreed to basically by everybody to avoid what
3 could have been an unthinkable 3018 process. No 3018
4 motions were ever filed. We've never heard from anybody
5 ever in this case until this objection was filed. And these
6 procedures, as Your Honor remembers, were worked out with
7 the AHC, with the NCSG, and with the UCC and the disclosure
8 statement and these mechanics were agreed to by no objection
9 from either today's objectors or I believe anyone else that
10 was unresolved. To say now that the one dollar thing
11 justifies some sort of infirmity is totally inappropriate.

12 And one other very brief point, speaking of
13 inappropriate, to recharacterize Mr. McCarthy's presentation
14 or brief as the Debtors have conceded they made a mistake
15 and now they're trying to fix it, is just misrepresenting to
16 this Court, just ridiculous.

17 THE COURT: I don't need to hear on that point.

18 MR. HUEBNER: Thank you, Your Honor.

19 MR. MACLAY: Your Honor, Kevin Macclay for the MSGE
20 Group. On the legal aspects of the one dollar claim, I
21 would direct Your Honor to Page 16 of our confirmation brief
22 and No. 27, where we go through a number cases that have
23 held a one dollar -- in a mass tort case, a one dollar
24 voting amount is appropriate. And I would just like to read
25 to Your Honor the A.H. Robbins analysis, which was affirmed

1 by the Fourth Circuit: "Any attempt to evaluate each
2 individual claim for purposes of voting on the debtors plan
3 of reorganization would, as a practical matter, be an act of
4 futility and would be so time consuming as to impose on many
5 deserving claimants further intolerable delay not only to
6 their detriment but to the detriment of the financial well-
7 being of the estate as well."

8 And I think, Your Honor, that analysis totally
9 applies here and clearly justifies the one dollar voting
10 amount because to liquidate the various and complex
11 interrelated claims of all of the claimants here would have
12 been essentially an impossible undertaking and certainly the
13 gain would not have been worth the gamble, Your Honor, as
14 noted by A.H. Robin and a litany of other cases cited in our
15 brief.

16 THE COURT: Okay. Very well. I guess to me,
17 ultimately the fact that the class that the objecting states
18 say that they would want to be in, which would be a class of
19 states only, voted overwhelmingly in favor of the plan,
20 suggests that they would want to fight it out with these
21 other 38 states as to the amounts of their claims, which I
22 don't think is what Mr. Gold was saying, which is that the
23 local governments have smaller claims. I actually think it
24 is a nonmaterial amendment to a plan to allow a plan to be
25 amended to reclassify in a class if one believed that the

1 class needed to be reclassified.

2 So I guess, to me, this seems to be unlike some of
3 the other arguments that the objecting states have made,
4 just an attempt to throw sand in the gears without any real
5 merit to it whatsoever.

6 So why don't we move onto the next topic, which is
7 the NOAT allocation issue raised as the only basis for West
8 Virginia's objection to the plan and I think here, counsel
9 for the Ad Hoc Committee of States and other Governmental
10 Entities will argue in support of the plan and then we'll
11 hear from West Virginia's counsel in support of the
12 objection.

13 MR. WAGNER: Thank you, Your Honor. Can you see
14 and hear me? It's Jonathan Wagner from Kramer Levin on
15 behalf of the Ad Hoc Committee of Governmental and Other
16 Contingent Litigation Claimants.

17 THE COURT: Yes, I can.

18 MR. WAGNER: Before I start, I just want to thank
19 my Kramer Levin colleagues who have worked on this matter.

20 Your Honor, there are difficult questions that you
21 need to answer in this hearing, but allocation is not one of
22 them. And while we take the objection every seriously, it's
23 not really a close question. The context is very important.
24 We have 49 states on one side and 1 on the other. And when
25 does the majority of the states in this country agree on

1 anything?

2 Here, you have 49 states who agree, or at least
3 didn't object -- I don't want to overstate it -- and only
4 one has disagreed. In fact, 49 --

5 THE COURT: I actually think it's 47 to 1, but
6 that's okay.

7 MR. WAGNER: I won't round up to 49, but it's 1 on
8 the other side and if the plan is so grossly unfair, why is
9 it that only one state is objecting? These numbers alone
10 could be used to justify compliance with the code, but even
11 if you put aside those numbers and address the objections on
12 its merits, it's clear that this plan satisfies the code.
13 And as Mr. Huebner noted, no plan is perfect, but this one
14 is pretty good. It's also fair to West Virginia.

15 As we heard during the testimony, West Virginia
16 has about half a percent of the nation's population, but is
17 getting more than twice that under the plan. And the reason
18 is because the plan takes into account the intensity and
19 severity measures that have been advocated by West Virginia
20 itself. It just doesn't take them into account at the same
21 extent.

22 Now Your Honor has to decide this issue based on a
23 record that's before you and I don't know what Attorney
24 General Morrissey is going to raise, but in this case, we
25 have two witnesses, one was John Guard from the Florida

1 Attorney General's Office who was a very credible witness,
2 and on the other side, we had Dr. Cowan who was the only
3 witness offered by West Virginia and his testimony was full
4 of admissions and contradictions. And his admissions on
5 fairness and the reasonable nature of the plan and good
6 faith are prone to objection.

7 Let me bring up the specific objection. The first
8 is that the plan was not proposed in good faith in violation
9 of Section 1129(a)(3). Under 1129(a)(3), a plan has to be
10 proposed with honestly and good intentions. That's the
11 Chassix case, 533 B.R. 64 at 74. To get in on one side, we
12 had John Guard's testimony and his declaration. And Dr.
13 Cowan's testimony to the contrary just does not overcome
14 that testimony.

15 Mr. Guard was extremely credible and as Your Honor
16 will recall, there was no significant cross-examination of
17 him. He testified to years of negotiations and compromises
18 back and forth. That was at Paragraph 10 to 47 of his
19 declaration, and the testimony on Day 2, Pages 95, 105-106,
20 and 118.

21 Now, could it really be that an allocation plan
22 that was negotiated by all of the country's Attorneys
23 General was negotiated in bad faith, that there was some
24 national conspiracy among the top legal officers of the
25 various states? Just to state that proposition shows how

1 farfetched it is. These are negotiations that had to
2 balance the interests of fifty different states. And nobody
3 ganged up on West Virginia.

4 Now the two -- there were two specific complaints
5 raised by West Virginia under 1129(a)(3). The first is that
6 the plan is a political compromise. As Your Honor is well
7 aware, compromise is de rigueur in bankruptcy and is, in
8 fact, favored. Compromise is not a dirty word.

9 A second specific objection is that the large
10 states somehow took control of this process. This is not
11 consistent with the outcome here. The small states,
12 including West Virginia, do very well under this plan, and,
13 Your Honor, should ask what proof has been offered here that
14 the large states seized the process. There's been no fact
15 witness offered by West Virginia, and on top of this we have
16 the admission by Dr. Cowan, that the plan, that reasonable
17 people may differ. That's at page 230 of the fourth day of
18 the hearing.

19 Another (indiscernible) issue of good faith, Your
20 Honor, is whether the plan achieves the result that's
21 consistent with the Bankruptcy Code. That's the Chassix
22 case at 533 B.R. 74, and as -- my -- the others who have
23 made presentations before have noted, this is a plan that --
24 that confers substantial value on many different creditor
25 groups, and it not only delivers value to creditors, I think

1 it's fair to say it's a plan that's in the national
2 interests. It's a plan that literally saves lives, and how
3 often can -- how often can somebody say that about a
4 bankruptcy plan?

5 On this score that (indiscernible) that the
6 statements pre-litigation by Dr. Cowan, I think, are very
7 relevant, "spending more now in an effective way, though,
8 will reduce damages". That's Exhibit 389 at Page 12, and as
9 he also admitted, all the plans here are effective, at the
10 pages 241 to 242 of his testimony. So how could a plan
11 that's in the national interest somehow be bad faith? That
12 -- is that an objection raised by West Virginia is that it
13 is one of equal treatment under 1123(a)(4) of the plan, of
14 the code.

15 Now here, all the states are subject to the same
16 criteria, the treatment is identical, and under the W.R.
17 Grace case, "what matters is not the claimants recover the
18 same amount, but they have an equal opportunity to recover
19 on their claims". That's W.R. Grace 729 f.3rd after Page
20 327. Since all the states are treated equally, you could
21 argue that the proper standard is Rule 9019, and here the
22 settlement clearly falls above the lowest point in raise of
23 -- in range of reasonableness.

24 There's no argument to the contrary and Dr.
25 Cowan's admissions that the plan -- that the plan is

1 reasonable really ends the matter, and I'd also note his
2 admission that he prefers the bankruptcy plan to no plan.
3 That's at Page 242 to 243 of the fourth day of the hearing.
4 But even if Rule 9019 is not the standard, and you simply
5 apply 1123(a)(4), the objection still fails. West Virginia
6 has characterized this objection as -- as follows, "same
7 treatment does not mean identical treatment, and courts have
8 approved settlements where the class members received
9 different percentages of recovery to take into account
10 different factors. So long as the settlement terms of
11 fashionably based on legitimate considerations." That's the
12 West Virginia objection at Paragraph 28, citing cases.

13 The objection that West Virginia raised is -- is
14 that the plan places too much emphasis on population,
15 however, we have Dr. Cowan's statement, prelitigation, that
16 "large communities likely should receive more than small
17 communities". That's Exhibit 380 -- 388 at Page 6. In any
18 event, West Virginia overstates the importance of population
19 under this plan.

20 Just to go into a little bit of math, population
21 is 31 percent of 80 -- of the first 85 percent and the
22 balance is intensity measures, and then you have the
23 remaining 15 percent that's all intensity measures and you
24 all have the -- you also have the 1 percent intensity fund,
25 and for all of those reasons, that's why West Virginia,

1 which has about a half a percent of the population, is
2 getting more -- is getting 1.16 percent of the funds.

3 But, Your Honor, may legitimately ask why
4 (indiscernible) the population at all? It's not at a
5 political -- or it's not a political criteria. It's a
6 rational criteria. It's not like throwing darts against the
7 wall. Mr. Guard testified that there are issues concerning
8 the intensity and severity measures, which make them
9 subjective in some sense, and population is an objective
10 measure. And I'd refer the Court to Mr. Guard's testimony
11 at Pages 90 to 91 of the second day of the hearing, where he
12 noted issues concerning under reporting as to those severity
13 and intensity measures, inconsistencies among the states in
14 reporting cause of death; and he said at Page 91,
15 "population was added to try to deal with the issues that
16 existed for the other metrics", and -- and he went on to
17 say, "population was and is a typical metric that is
18 utilized in State Attorney General settlements", again, Page
19 91. And we cited in our -- in our response a couple of -- a
20 couple of among many instances in which national settlements
21 used population as the only factor. In Recompact Disc, 216
22 F.R.D. 197 at 200, in re Toys-R-Us antitrust litigation 191
23 F.R.D. 347 at Page 350, and significantly, Dr. Cowan
24 admitted that this settlement is a lot more fair than other
25 national settlements, including the national tobacco

1 settlement. That's at Page 2 -- (indiscernible).

2 Just a minute on California, I don't know whether
3 Attorney General Morris is going to raise that issue. It's
4 a minor point, whether they contribute to the intensity
5 fund. But during cross-examination, it was established that
6 had the plan used expenditures on criminal justice as a
7 factor, as Dr. Cowan did in his prelitigation hypotheticals,
8 then California would have been far better than the 9.9
9 percent it gets under this plan.

10 The one final point, Dr. Cowan's plan, it's
11 legally irrelevant under NII Holdings 536 B.R. at 125, but
12 even if you plan more than (indiscernible) it doesn't really
13 advance the objection. And when an expert changes his
14 opinion so dramatically, as I think Dr. Cowan did from
15 prelitigation to post-litigation, really has no credibility.
16 And he admitted during his -- during the cross that his
17 post-litigation plan is not remote -- does not remotely
18 resemble his pre-litigation plan. And then also, he
19 admitted before litigation -- he admitted before litigation
20 that "there is no simple answer to the question how to
21 allocate one large settlement -- one large opioid
22 settlement. Too many questions remain. Too many issues
23 need to be resolved." That's Exhibit 388 at Page 14. He
24 had admitted that what's fair under these circumstances is
25 complicated. That's Pages 233 to 234.

1 He said that spending more money won't necessarily
2 get you better results. That's Exhibit (indiscernible) at
3 Page (indiscernible). He said, "treatment in terms of
4 offerings may not translate into increased efficacy", and
5 just -- "just spending more to achieve equality may not be
6 the best outcome". That's Exhibit 392 at Page 12. And then
7 also, his plan produces very odd results. Washington, which
8 has one fourth the population of Texas gets more than Texas.
9 Kentucky, one fourth the population of New York, gets more
10 than New York. Virginia, with a growing population, four
11 times the population of West Virginia, which is losing
12 population, gets less than West Virginia. And Your Honor,
13 the point of that exercise was to understand the point that
14 if you change this plan to make it more fair to one state,
15 for example, West Virginia, you have problems elsewhere in
16 the plan. But I think it underscores how difficult it was
17 to reach a compromise here, a balance, and I think all of
18 that allows, Your Honor, discretion to (indiscernible)
19 allocation under this plan.

20 To sum up, Your Honor, allocation under this plan
21 is based on rational and legitimate considerations. It's
22 actually quite an achievement. It confers the benefit on
23 the States and on the Nation as a whole. And I have to say
24 no good deed goes unpunished because West Virginia, does
25 pretty well under this plan, and West Virginia's criticism

1 really fail on their own terms, but certainly in the large
2 context of this case. And the larger context is as the West
3 Virginia expert, himself noted, the more time that this
4 problem festers without additional spending on opioid
5 abatement, the worse the problem will become. And that's
6 probably why the West Virginia expert admitted that he
7 prefers the current plan to no plan. And for all those
8 reasons, Your Honor, the Court should reject the objection.
9 Thank you.

10 THE COURT: Okay. Thanks. So again, Counsel for
11 West Virginia, Mr. Morrissey, I think is going to handle the
12 argument in support of the objection.

13 MR. MORRISSEY: Your Honor, this is Attorney
14 General, Patrick Morrissey, and I'm grateful for the
15 opportunity to appear before you today. I would mention, at
16 the outset, that the issue of the opioid epidemic is quite
17 severe in our state, and regardless of all of the issues
18 that you're hearing about, I think one area that we can find
19 in common with virtually every party, is everyone would
20 mention that West Virginia was ground zero at the opioid
21 epidemic. If you looked at many of the metrics, West
22 Virginia had the most horrific of experience with the level
23 of intensity and severity that I think virtually all counsel
24 would concede.

25 The reason I'm very appreciative to be before you

1 today is because this decision represents the first of
2 likely many in a series of court cases which will determine
3 how abatement is going to occur in the country, and I
4 recognize that many of the states spent many years and they
5 worked on it. But just because many states agree on a
6 flawed formula doesn't make it correct. And so we are
7 asking the Court to look at the grave issues associated with
8 this particular case in having the predominant population
9 based model, contrary to Counsel's argument that it's 31
10 percent population, effectively, a vast majority of this
11 formula is based upon population. It's not based on
12 severity. In fact, the one severity measure that everyone
13 can point to is the 1 percent fund that's been discussed a
14 lot.

15 If you actually looked very carefully at what the
16 principle public health agency of the country, whose task
17 was charged with looking at these issues comes up with,
18 they've indicated that intensity should represent 15 percent
19 of the overall formula. The difference between 1 percent
20 and 15 percent is obviously very stark. Now Counsel --

21 THE COURT: Can I just say that --

22 MR. MORRISEY: -- indicated --

23 THE COURT: -- let me just interrupt you --

24 MR. MORRISEY: Sure.

25 THE COURT: -- Mr. Morrisey, that -- you're --

1 you're referring to the, it's an acronym, it's S A -- S H --

2 I'm not trying to letter --

3 MR. MORRISEY: SAMHSA?

4 THE COURT: SAMSA, but it's SAMHSA?

5 MR. MORRISEY: SAMHSA -- I think it's Substance
6 Abuse Mental Health Services Administration.

7 THE COURT: And -- and as I understand it, that
8 has changed -- that comes out once a year or every other
9 year and it is changed from time to time?

10 MR. MORRISEY: It has changed. I know that the
11 most recent formula that we've looked at, they have an
12 intensity fund applying to ten states that then would be
13 able to claim up to 15 percent of the aggregate dollars that
14 Congress appropriates.

15 THE COURT: Okay.

16 MR. MORRISEY: So if we step back to Counsel's
17 arguments that this plan was made in good intention, I think
18 that that statement could be torn apart fairly quickly.
19 Let's start with something that Counsel indicates is a very
20 small issue, and you can make an argument about whether 1
21 percent of the aggregate funds going to a particular state
22 is small or large, but when you're talking about the largest
23 state in the country for all the states to come together
24 behind, what I would call, the California carveout or cash
25 grab, you're talking about a significant amount of money.

1 Not only with respect to the amount with this Purdue
2 bankruptcy, but all those in the future. And so, that 1
3 percent is not indicative of good intentions.

4 How could every state contribute to a particular
5 intensity fund showing that at least on a minimal basis, all
6 states believe that intensity's important and one state be
7 afforded the opportunity, due to political consideration, to
8 argue well, we shouldn't have that in there.

9 Your Honor, the arguments we bring before you
10 today, we think are straight forward and don't contain some
11 of the same controversy that you had on Monday, or you've
12 had throughout. These issues that we'll bring in with
13 respect to No. 1, trying to eliminate the California carve
14 out. That's straight forward. That could be easily
15 adjusted because there's no rational basis, whatsoever, no
16 legitimate consideration that one state should ignore
17 intensity considerations. I would defy Counsel to come up
18 with one good reason. They cite an 18 percent issue with
19 respect to judicial enforcement and other matters, but
20 nothing in the record indicates that that's even tied
21 directly to opioids.

22 There are many reasons why a state ultimately
23 might have more resource needs with respect to law
24 enforcement and other areas. But everyone that's gone
25 through this process would acknowledge that the California

1 piece is one of the blites on this deal that needs to be
2 changed, because once again, it's not good faith to allow
3 one state to not contribute to a fund that every other state
4 does.

5 The second piece, which I think is equally
6 powerful, is that most of this formula is once again based
7 upon population. Counsel cites 31 percent, but if you look
8 closely at the formula when you're looking at morphine
9 equivalents, when you're looking at several other factors,
10 it's clear that we're effectively quadrupling the population
11 count, and Counsel and our expert witness, Chuck Cowan,
12 testified to that fact without any contravention.

13 That's something that's not rational when you're
14 trying to solve a problem. It -- Counsel states that this
15 is consistent with many other matters that get settled by
16 the state, but frequently, when states are involved in a
17 consumer or an antitrust matter, there could be
18 discouragement and there could be something focused on a
19 population. This particular issue deals with the disease
20 state of individuals and what's happening within specific
21 communities.

22 So to be able to say there should be a population
23 based formula to solve the problem, rational economic theory
24 would never suggest that you're going to go in and say how
25 many people live in a state? That's how we're going to deal

1 with the opioid epidemic? It's an embarrassment and an
2 affront to any attempt to have good faith when the focus is
3 so much on population. And of course, there were rigorous
4 discussions about this for years. I recognize that many of
5 my colleagues ultimately decided to move in a different
6 direction, but the importance for this Court, for this
7 precedent, to get it correct, to do two things; eliminating
8 that California carve out, and two, asking to go back and to
9 either: a) change the population based system and move it
10 more to an intensity system, or b) simply taking an easier
11 tactic, which would be to move from 1 percent of intensity
12 fund to 2 percent or 3 percent, which I would note is very
13 different than what SAMHSA recommends, at 15 percent. That
14 would create a much different abatement structure, which is
15 going to allow money to flow to the communities that
16 actually need it most. And I think that's what we're all
17 here to do, to make sure that money gets out quickly.
18 That's why we've tried to work collaboratively with the
19 states, and we haven't objected to other provisions, but we
20 see this as a fatal flaw of the agreement.

21 But, Your Honor, you have the ability to help
22 change that and to convince the parties that a California
23 cash grab, or carve out, is inappropriate. It should make
24 America very, very upset, and separately, the intensity fund
25 is still inadequate, given the fact that when you solve a

1 problem, you look at healthcare capacity. You look at the
2 structure or what's being done to deliver healthcare within
3 a particular community. You look at the opioid deaths and
4 you look at the people that are not treated, currently.

5 Based upon all of those factors, it's clear that West
6 Virginia is a unicorn, so it's not surprising that we would
7 get voted out on a particular issue like this because our
8 numbers are so bad, compared to every other state.

9 We're asking the Court to help bring that good
10 faith back to the process by making those two modest
11 considerations: 1) eliminate that carve out, and 2) increase
12 the size of the intensity fund so that many years from now,
13 we're not going to go back and look at this like we all
14 looked at tobacco, that the moneys were actually not put in
15 adequately to solve the problem. That is just ended up
16 being a political grab bag. That's what we should all
17 oppose.

18 This is a court of law where everyone expects to
19 get the best treatment under a quality of law. It's not
20 Congress, it shouldn't be compared to that where they make
21 political deals all the time. We have a chance to actually
22 focus on solving the problem, the right way, in a manner
23 that this allocation formula does not.

24 Your Honor, I'm very grateful for the opportunity
25 to personally come before you today. This is the number one

1 issue facing our state, and I wanted to amplify how
2 important it is that we fix this because what this Court
3 decides to do is likely to serve as a president going
4 forward for all the other litigation that we have against
5 manufacturers and pharmacies. And what we've found through
6 all the years, West Virginia's been out in front, leading on
7 this issues, is that we have to focus on intensity and
8 severity. And this allocation formula does not do that, and
9 the record makes that clear.

10 THE COURT: Okay. Thank you.

11 MR. WAGNER: This issue has to be decided on the
12 record and there's a -- there's a record before your Honor.
13 I don't think I need to dwell on it any longer. Second, Mr.
14 Guard, I think testified eloquently why population is not
15 some random (indiscernible). It covers some of the
16 subjective problems with the other factors; and third and
17 for this, I'm going to have to defer to my bankruptcy
18 colleagues, but as I understand it, Your Honor, doesn't get
19 to redline this part of the plan. It's either plan or no
20 plan, and it's significant that Dr. Cowan, when he was asked
21 plan or no plan, he said he prefers the plan. Thank you.

22 THE COURT: Well, don't go away yet, Mr. Wagner.
23 I -- I agree, the record is pretty -- is not pretty, it's
24 well developed on this issue, with one possible exception,
25 which is why California, of all states isn't contributing to

1 the 1 percent small state fund. I understand there was
2 testimony that California has the highest, I believe there
3 was testimony, I'll have to go back and look at it. Either
4 has the highest or a significant amount of criminal justice
5 expense. But and I appreciate your, and Mr. Guard was
6 (indiscernible) limited in what could be discussed about the
7 party's negotiations, particularly given the sensitive
8 nature of individual states negotiations. But I -- I --
9 again, I'm dealing with a specific statute, which is
10 1123(a)(4), which says that a plan shall provide the same
11 treatment for each claim or interest of a particular class,
12 unless the holder of a particular claim or interest agrees
13 to less favorable treatment. And I understand that you said
14 that this proposal, just like the State of West Virginia's
15 proposal, isn't a straight or simple pro-rata treatment,
16 it's a formula that has adjustments to it to take into
17 account various different states or groups of states
18 interests. But they all seem to have acted as a group,
19 except on this one point, where only California is carved
20 out, unless I'm missing something.

21 MR. WAGNER: No it's only -- it's only California.
22 So a couple of points. First, the class -- first of all the
23 class has voted for this. Everyone else has gone along with
24 it --

25 THE COURT: No, but that's --

1 MR. WAGNER: -- second of all --

2 THE COURT: -- that's not -- but that's not --

3 1123(a)(4) applies notwithstanding the class vote, if
4 there's an objector, like West Virginia, then they can raise
5 1123(a)(4).

6 MR. WAGNER: Well, look, I -- I can't speak to
7 California's motivation, but this is not -- it's not a big
8 issue. It's a contribution to 1 percent, and California
9 does have an argument, as I noted during the cross of Dr.
10 Cowan, that had a different set of factors been used --

11 THE COURT: I understand that, but again, the
12 statute I'm dealing with is provide the same treatment for
13 each claim. Now here, I get it, it's in the context of a
14 heavily negotiated settlement among the states, the 48
15 states that are participating in this plan. The other two
16 having settled with Purdue, pre-bankruptcy. So I think to
17 some extent, one looks at the fairness of the overall
18 settlement as opposed to the same treatment, and that's
19 corroborated by the fact that the -- Mr. Cowan's proposal is
20 depends on different factors too, it's not the same, you
21 know, it's not just a prorata under one measure for -- for
22 any state.

23 But it -- it is -- unless there's a really good
24 explanation for it, it is somewhat anomalous that
25 California, alone, is not contributing to the small state

1 fund. Unless I'm missing something.

2 MR. WAGNER: Well, again --

3 THE COURT: I mean, I think, I mean, maybe I'm
4 putting words in Mr. Morrissey's mouth, but if it's not that
5 big a contribution, why doesn't California just agree to it?

6 MR. WAGNER: Again, I can't speak to California's
7 motivation, but I would say it's in the general context of
8 the plan. It's not -- it's not material.

9 THE COURT: Well --

10 MR. WAGNER: The contribution --

11 THE COURT: -- but -- I -- (indiscernible) I don't
12 know. I don't -- I think that argues both ways, frankly.
13 All right.

14 MR. WAGNER: I -- yeah, I take, Your Honor's
15 point.

16 MR. MORRISSEY: Your Honor --

17 THE COURT: I mean, I -- I -- the reason I've had
18 -- and I'm sorry to interrupt you, Mr. Morrissey, the reason
19 I'm asking this is you do have a very good record here, Mr.
20 Wagner, generally. But all I have, I think on the
21 California piece, unless I'm missing some piece of it, is
22 that one can argue that if you took law enforcement as an
23 allocation factor and Mr. Cowan, did testify that that could
24 be taken as an allocation factor, California would actually
25 be getting a lot more. What I don't have is whether that's

1 any different than all the other 47 states or whether
2 they're just saying my way or the highway. Even though they
3 really aren't that different than the other 47. But maybe
4 there's something in the record that suggests that they are
5 unique, or that of the states contributing to the 1 percent
6 fund, they have a highly disproportionate amount of law
7 enforcement activity, particularly related to opioids.

8 MR. WAGNER: Well, again, I think -- again, I
9 think the (indiscernible) of California could have argued
10 otherwise, and this was a -- this was (indiscernible) and a
11 compromise among the states, and they've all gone -- they've
12 all gone along with it, including others similarly situated
13 (indiscernible) West Virginia, but I take, Your Honor's
14 point.

15 THE COURT: Okay. Well, I hate to --

16 MR. MORRISEY: Your Honor --

17 THE COURT: -- I hate to -- if I could just get
18 this out, Mr. Morrisey. I hate to suggest more issues for
19 people to negotiate over in the next couple of days, but
20 this may be one that the states may want to discuss with the
21 State of California. I -- I under -- I think I do
22 understand both sides arguments on this point. But I'll
23 hear Mr. Morrisey on it.

24 MR. MORRISEY: Your Honor, I would address the
25 materiality issue that in light of the sums of money that

1 are involved, when you're talking about 1 percent of a
2 state's share, if you look at \$10 billion, hypothetically,
3 that's \$100 million.

4 THE COURT: No I -- that's --

5 MR. MORRISEY: And so it --

6 THE COURT: -- I agree.

7 MR. MORRISEY: -- from a West Virginia
8 perspective, when you're talking about a small intensity
9 fund, we could be talking millions of dollars, and so that's
10 the first piece. So it is material, and second, once again,
11 we would point out that the record is very clear, that John
12 Guard testified that California said this was good enough,
13 and that they weren't going to give any more, but once again
14 that doesn't meet a good faith standard, and that's why
15 we've always asked, at a minimum, not only to increase the
16 intensity fund but this is a blight on the deal, and it
17 doesn't meet any rational considerations. It's not based on
18 a legitimate consideration.

19 THE COURT: Well, I -- I do -- I would put a
20 qualification on what you just said, sir, which is I don't
21 think this is a good faith issue. I think it's really a
22 same treatment issue and I -- I have a hard time seeing one
23 state, whether it be West Virginia on one side or California
24 on the other, having a unique treatment that other hadn't
25 negotiated, you know, for some very good reason, and I'm not

1 sure I see one here. But I'll have to -- I'll have to
2 consider this carefully.

3 MR. WAGNER: And just one more point about the
4 math, if the intensity fund is 1 percent, 1 percent of 40 --
5 \$4.5 billion, if my lawyer math is right, is \$45 -- \$45
6 million, the West Virginia --

7 THE COURT: I -- but look, it's the, you know,
8 it's the (indiscernible) Webster's line it's a small school,
9 but there are those that love it, you know, money's money
10 here. It's important.

11 MR. WAGNER: The West Virginia share of that is
12 \$450,000.

13 THE COURT: Well, that -- that can help -- that
14 can help someone in West Virginia.

15 MR. HUEBNER: But Your Honor, one very small point
16 from the Debtors, if the states are able to work this out
17 amongst themselves in connection with the Court's, I think,
18 pretty strong direction, we think that'll be fabulous. If
19 the Court, nonetheless, felt in the absence of such an
20 agreement, that the Court was essentially going to direct
21 it, this is not the debtor's fight, but we would certainly
22 not have no objection to that as the plan proponent it is
23 our plan that would be changed. I think that the Debtor's
24 view has at least some small relevance and we would not
25 object.

1 THE COURT: Okay. Thank you.

2 MR. ECKSTEIN: Your Honor, I would just make one
3 point. This is Kenneth Eckstein. I do want to point out --
4 and I hear Your Honor's suggestion, and I think we would
5 obviously love to have that consensus achieved. I do want
6 to point out that California remains an (indiscernible)
7 state and I don't --

8 THE COURT: I understand.

9 MR. ECKSTEIN: -- hold out the likelihood that
10 we're going to be able to resolve this specific issue with a
11 state still objecting to the plan. So from a resolution
12 standpoint, I don't want to give the wrong impression, Your
13 Honor, about what's (indiscernible).

14 THE COURT: That's fair. I just -- I want -- I
15 think -- and I don't know whether specific counsel from
16 California is listening, although they've joined in.
17 California's joined in the Oregon and Washington objection
18 and others. It's -- look, I'm just pointing out my concern
19 about this issue. That's all.

20 MR. ECKSTEIN: And we do understand, Your Honor.
21 And obviously, the states worked as hard as they possibly
22 could to bring the broadest possible consensus.

23 THE COURT: Well, that's clear.

24 MR. ECKSTEIN: There is this --

25 THE COURT: I -- look, that is clear to me. That

1 is clear to me, but nevertheless, I have to apply
2 1123(a)(4).

3 MR. ECKSTEIN: I believe, Your Honor, that you
4 can, and I believe that there is equal treatment. But
5 you're correct that that equal treatment includes an
6 exception, in a sense, for one state that would've argued
7 for more. They believe they were entitled to more --

8 THE COURT: I agree.

9 MR. ECKSTEIN: -- than they're getting, and this
10 is where the settlement came to rest. Can it be improved?
11 Like all settlements, yes, but I just --

12 THE COURT: Well, that's --

13 MR. ECKSTEIN: -- want to suggest, Your Honor,
14 that this one may be difficult for us to change. And I
15 don't --

16 THE COURT: That's fair --

17 MR. ECKSTEIN: -- want Your Honor frustrated by
18 the inability to make that movement right now.

19 THE COURT: Okay. Very well.

20 MR. ECKSTEIN: Thank you.

21 THE COURT: All right. Thank you both counsel on
22 that issue. So I think we are next, on the topic list, for
23 the objection by the Canadian municipalities and First
24 People's listed in Mr. Underwood's objection. And again,
25 this is to cover points other than the third-party release

1 point, except for one sort of overarching jurisdictional
2 point that Mr. Underwood wanted to discuss I think, which is
3 sovereign immunity or foreign sovereign immunity. So the
4 Debtors have reserved a very brief time for their remarks,
5 and then I'll hear from Mr. Underwood. And then they have
6 some time for rebuttal.

7 MR. TOBAK: Thank you, Your Honor.

8 MR. UNDERWOOD: Your Honor, Allen --

9 MR. TOBAK: Oh.

10 MR. UNDERWOOD: Go ahead.

11 MR. TOBAK: Anyway, this is Mark TOBAK, Davis Polk
12 for the Debtors. The Debtors' response to the Canadian
13 objector's objection is set forth in full in our brief, and
14 there's no need to repeat it here. It appears that over the
15 course of the hearing, Mr. Underwood's argument may have
16 evolved since the filing of our reply brief. So the Debtors
17 do reserve their time for rebuttal.

18 THE COURT: Okay. So --

19 MR. UNDERWOOD: Thank you.

20 THE COURT: -- Mr. Underwood, you can go ahead.

21 MR. UNDERWOOD: Thank you, Your Honor. Allen
22 Underwood on behalf of -- Allen Underwood with the firm of
23 Lite Depalma Greenberg and Afanador on behalf of certain
24 Canadian municipal creditors and Canadian First Nations
25 creditors. I think the way that we have always viewed this

1 proposed plan (indiscernible) and it's a (indiscernible)
2 short period of time that it may be leading this Court to
3 error. In particular, irregardless of any of the other
4 arguments made by other creditors, that may be leading this
5 Court to errors particularly with regard to the Canadian
6 Municipalities and First Nations.

7 Technically, the Sacklers (indiscernible) vast
8 wealth beyond the jurisdiction of this U.S. court, and that
9 wealth was largely derived from the U.S. enterprise that is
10 actually before this Court. In so doing, and unfortunately
11 at least as this plan is drafted, the Sacklers have made
12 themselves in their trust something along the effect of --
13 and it's not (indiscernible) themselves. And in effect, in
14 the manner in which they're contributing assets to the plan,
15 they are not -- they're not bowing to this Court. Rather,
16 they're seeking to direct it.

17 THE COURT: Mr. Underwood, this is --

18 MR. UNDERWOOD: In essence --

19 THE COURT: -- really far afield from, not only
20 your objection, but also from what I just said, which is
21 that you had your chance to argue about third-party release
22 already. I -- it's also, I think, just not -- I'm not quite
23 sure where you're going on this. They actually are
24 submitting to the Court's jurisdiction to perform the
25 settlement, including the injunctive provisions of the

1 settlement. So --

2 MR. UNDERWOOD: I --

3 THE COURT: And as far as the -- your clients,
4 whether the Court would have jurisdiction over your clients,
5 they've all filed claims in this case. They're looking to
6 recover --

7 MR. UNDERWOOD: That correct.

8 THE COURT: -- money in this case.

9 MR. UNDERWOOD: That's correct, Your Honor. And
10 where I was going from the outset was this notion,
11 effectively, that the Sacklers cast a dark pale over this
12 entire settlement by suggesting that -- there's a pinhole
13 that they suggest that they would walk away from this plan
14 in the event that these releases are not approved. And I
15 don't know whether that's true or not.

16 But what they've done is to -- effectively, this
17 Court is administering non-Debtor assets in Canada by way of
18 the IACs and the rights of the Canadian Claimants in Canada
19 to bring claims against the Sacklers. And I think that
20 jurisdictionally in the first instance here, that's a bit of
21 a problem.

22 Now I'll go to Section 106, and I guess the
23 related issue, which is the way that this plan was
24 structured, if you were an international creditor, you were
25 given the devil's choice of filing a claim and affirmatively

1 participating in this process or not filing a claim and
2 seeing how it played out. And I guess reserving your rights
3 to pursue assets elsewhere.

4 The problem is that this Court -- because of the
5 fact that the overall resolution here is actually
6 administering non-Debtor assets in such a vast manner, that
7 it's a bit unfair, generally, I think, to hold the Canadian
8 Creditors to the kind of global Section 106 waiver that the
9 Debtors would suggest. And the Debtors cite no case law
10 about the scope of 106. And I think in principle, my
11 understanding of what Section 106 is, is it's a defensive
12 provision effectively to make sure that there are counter-
13 claims under the Bankruptcy Code that can be brought so that
14 if a sovereign submits to this Court an affirmative claim,
15 there can be counterclaims.

16 Now, in this case, there's been no allegation of
17 any form of Debtor claim, counterclaim, avoidance action
18 claim against Canada. All Canada's set to do by
19 participating is preserving its rights. And in fact,
20 obviously the Canadian Municipal Creditors are glad they
21 participated because, frankly, assets in Canada are being
22 directed under the plan confirmed here to U.S. trusts, and
23 those are U.S. trusts, which the Canadian Municipal
24 Creditors and First Nations are not -- they're not
25 beneficiaries.

1 And this is really because of the manner in which
2 the Debtor has structured this plan. And when I say that, I
3 -- we would have no argument here today had the Debtor
4 effectively put the Canadian Municipal and First Nation
5 Creditors in Classes 4 and 5 under the plan. And in fact,
6 actually, factually, that's exactly what my clients thought
7 up until -- and the Debtor admits this -- up until virtually
8 a week before the plan objection on the sixth amended plan
9 was due, at which point the Canadians were advised, well,
10 despite the fact that you received ballots in Classes 4 and
11 5, you're actually going to be treated in Class 11C.

12 And it was at that point that the Canadian
13 Municipalities and First Nations realized that merely filing
14 a claim in this case was not going to be enough to preserve
15 their rights before this Court, and that they would have to
16 take the actions they have taken since that point. But bear
17 in mind, Your Honor, that was a point 30 days ago. I think
18 there was a presumption on the part of the Canadians that by
19 filing a claim, their claim would get -- again, in same
20 manner and fashion, and fairly with respect to other
21 similarly situated claims.

22 Now, the Debtor clearly will make a distinction
23 between the Canadian Municipal claims and Canadian First
24 Nation claim, and the municipality claims, the State claims,
25 the City claims that are filed by the United States

1 entities. And they make that distinction by a nebulous
2 reference to how different those claims are. They've never
3 actually factually driven down why is a Canadian state
4 different -- or excuse me, a Canadian municipality different
5 from a U.S. municipality.

6 I would assert that the main difference is that
7 there was a coalition of U.S. states and later
8 municipalities that understood that they were -- and did
9 press in their own direction to establish the classes under
10 the plan, and that that was something that the Canadians
11 presumed that ultimately they would be brought into. And
12 they waited patiently, and ultimately, that never happened.

13 THE COURT: Well --

14 MR. UNDERWOOD: And that, again, is why we're
15 here.

16 THE COURT: -- the objection itself acknowledges
17 that the plan says what it says, which is that --

18 MR. UNDERWOOD: Right.

19 THE COURT: -- they're in the -- that the class
20 that would receive the governmental entities and the class
21 that would receive Native American tribes that would receive
22 distributions for abatement purposes through the trust would
23 be U.S. governmental entities and tribes governed by U.S.
24 law. I mean, that's -- that is clear in the plan, and it's
25 acknowledged. So I think the issue here, the legal issue,

1 is not that your clients have a right to be in that -- in
2 one of those two classes depending on whether they're a
3 First Nations Creditor or a Canadian Municipal Creditor, but
4 whether their treatment in the Class 11 is somehow improper.
5 Now, Class 11 --

6 MR. UNDERWOOD: And --

7 THE COURT: -- Class 11 voted for the plan, right?

8 MR. UNDERWOOD: It --

9 THE COURT: In favor of the plan.

10 MR. UNDERWOOD: Interestingly enough, Your Honor,
11 I think if you look at the voting tabulation for Class 11C,
12 and we did examine (indiscernible) tabulation, the
13 tabulation -- had the Canadian Creditors been able to
14 (indiscernible) dollar claim, the tabulation would have been
15 -- I think in terms of numerosity, the majority of creditors
16 in 11C, no matter how you slice it, would have voted in
17 favor of 11C.

18 But in terms of overall value, but for the dollar
19 value restriction, if you attribute any reasonable value to
20 the Canadian First Nations claims in terms of dollar value,
21 that class would've voted against the plan. And I don't --

22 THE COURT: But those claims are unliquidated.
23 And the Debtors, I think, are correct. Having received the
24 proofs of claim myself, it's very hard to see from the
25 claims whether they're against the Debtors or against Perdue

1 Canada or one of the Canadian entities. So there's been no
2 motion to estimate. I don't know why you don't count the
3 dollar amount.

4 MR. UNDERWOOD: And I don't want to waste a lot of
5 the Court's time on that subject. I think what we really
6 come down to is the Debtor hasn't presented anything to
7 suggest these Canadian municipalities and First Nations are
8 any different than tribes or cities in the U.S. Now what
9 does that mean --

10 THE COURT: But I would push back on that too.
11 They do say that there's a substantial issue, which again, I
12 could not get to the bottom of in looking at the proofs of
13 claim and the complaints attached to, as to whether these
14 claims are against Perdue Canada or against the Debtors.
15 And it's only to the extent they're against the Debtors that
16 they would even have a right to recover.

17 And of course, if they're against Perdue Canada,
18 they're not covered by the injunction under the plan. And
19 on top of that, and we just spent about 40 minutes on this
20 issue, it's quite clear to me that as far as the allocation
21 under the plan is concerned on the public side, the
22 governmental entities side, it's pretty much a minor
23 miracle, but it did happen that those public entities were
24 able to agree on an allocation.

25 But I have no basis to think that that agreement

1 would then include folding in foreign creditors who did not
2 participate, and I don't think sought to participate, in the
3 mediation on that issue. And --

4 MR. UNDERWOOD: I think --

5 THE COURT: And so, you know, I think courts have
6 been recognized that there is a basis for separate
7 classification. In fact, making a distinction even between
8 foreign claimants and U.S. claimants as long as there's a
9 rational basis for it, and including in the Sixth Circuit in
10 the Dow Corning case, Class 5 Nevada Claims v. Dow Corning
11 Corp., 288 F.3d 648, 642 (6th Cir. 2012).

12 Now, that was a case where there was evidence as
13 to the different types of recovery in different countries.
14 So -- but the principle is you don't have to -- you can
15 discriminate between domestic and foreign creditors if
16 there's a rational basis for it. And it seems to me there's
17 a rational basis.

18 I -- what is not clear to me is whether these
19 three -- I'm sorry, I think it's -- not three, I think it's
20 six creditors, would have any right to get involved in the
21 allocation abatement aspect of this, and frankly, how much,
22 if they even did, would go to them as opposed to their share
23 of the \$15 million in cash, which is coming out right away,
24 which they could certainly apply to abatement if they
25 liquidate their claims and they're against the U.S.

1 MR. UNDERWOOD: I think the difficulty that I'm
2 seeing here, Your Honor, is that I haven't seen anybody
3 distinguish what makes the international border here. What
4 makes Windsor, Canada different from Detroit? What makes a
5 Canadian Mohican different from a New York State Mohican?

6 THE COURT: I --

7 MR. UNDERWOOD: And that I understand, Your Honor.

8 THE COURT: Well --

9 MR. UNDERWOOD: I understand.

10 THE COURT: -- but I'll answer that -- I'll try to
11 answer that question from my own perspective, and you could
12 try to persuade me otherwise. I think the answer is we had
13 a many-months-long process in the mediation with Messrs.
14 Fineburg and Philips, as well as a mediation among the
15 states themselves, regarding the public side allocation,
16 which was incredibly difficult. And frankly, I don't see
17 how do we open that. I just -- you know, there was --
18 people -- look, I -- people did ask to be involved in the
19 mediation. The NAACP asked to be involved in it. I said
20 okay, but I think not having participated in that, and I
21 can't predict how that would've turned out if the -- if your
22 clients had sought and been granted the right to participate
23 in it, whether the U.S. entities would've said, no, it's
24 just too complicated.

25 But leave that aside. They didn't participate in

1 it. And at this point, we would be rewriting rules that
2 just, you know, I think the Debtor has the perfect right
3 under the Bankruptcy Code to have separate classification
4 and given the acceptance of the plan, separate treatment by
5 these two -- well, it was -- really would be four because
6 you have the Native American tribes and the First Nation
7 tribes, four different classes.

8 So, you know, it's not as if the class in which
9 the -- your clients are classified are getting nothing.
10 They're getting money upfront. There's no argument that
11 they would be getting more in the -- if they had
12 participated in the no-added Native American tribes class.
13 And indeed given the acceptance by Class 11, I don't think
14 that argument flies because that's a cram-down argument.
15 That's an 1129(b) disparate treatment or unfair treatment
16 argument.

17 So I just -- I don't -- to me, this objection sort
18 of tries to fit within applicable sections of the Bankruptcy
19 Code, but it just doesn't -- it doesn't -- to me it doesn't.
20 It doesn't fit in.

21 MR. UNDERWOOD: Your Honor, I appreciate your
22 explanation, and I'm going to try to convince you otherwise
23 --

24 THE COURT: Okay.

25 MR. UNDERWOOD: -- in the few minutes allowed.

1 THE COURT: And I'm going to (indiscernible) --

2 MR. UNDERWOOD: (indiscernible)

3 THE COURT: -- to make a good -- you can hear if
4 they have that chance.

5 MR. UNDERWOOD: I greatly appreciate it. And I
6 will -- I am reserving to subsequently here address the
7 jurisdictional question. But as to this issue, the counsel
8 for these Creditors did reach out to the Debtors. The
9 Debtors, in my opinion, were the first parties that had the
10 last clear chance to address these claims in what I think is
11 a more equitable fashion.

12 Mr. Dubel testified that the Special Committee
13 never reached out to these Creditors. These Creditors filed
14 their proofs of claim. Ultimately, Your Honor, what I would
15 go back to here is reference to the In re Dana Corp. case in
16 the Southern District, and Public Airways and this notion
17 that all claimants that are in a class must have the same
18 opportunity for recovery. I understand the notion that that
19 you're driving --

20 THE COURT: They're not in the same class.
21 They're in a different class.

22 MR. UNDERWOOD: All right. I'm not going to beat
23 a dead horse there.

24 THE COURT: Okay.

25 MR. UNDERWOOD: I think the placement of them into

1 a different class was a problem, and that's why I actually
2 started this argument at a different -- perhaps a higher
3 level, which is ultimately what happens here is material to
4 the global perception of U.S. courts and their manner in
5 which they deal with creditors.

6 And I think that the perception of the Debtors not
7 having addressed foreign municipalities in the same way that
8 they addressed U.S. municipalities when -- and let's face
9 it. If they were all vendors, the fact that they were
10 across the state border would not have impacted -- all other
11 things being equal would not have impacted their
12 classifications, and they would have this (indiscernible).

13 THE COURT: I agree with that.

14 MR. UNDERWOOD: All right.

15 THE COURT: I agree with that. On the other hand
16 --

17 MR. UNDERWOOD: So --

18 THE COURT: On the other hand, if they were
19 personal injury claimants, a la the Dow Corning case, the
20 Court -- the plan proponent wouldn't be within its rights to
21 have a separate classification if there was a rational basis
22 for it based on the different nature of their recovery. And
23 again, there is a -- there was a very lengthy, expensive,
24 and well-publicized process here to mediate the allocation
25 and treatment of public creditors that those who wish to

1 participate in, really pretty much just had to file
2 something if they were let in the door in a timely fashion,
3 and they would've participated, including the NAACP for
4 example and the school districts.

5 So I think -- look, clearly it is up to the
6 Canadian court in it's -- in response to a motion for final
7 recognition to decide this issue. But I think the record
8 should be clear that there was no exclusion of the Canadian
9 Municipal Creditors and First Nations Creditors from that
10 process, and the process was a lynchpin of this plan. To
11 now reopen it would be, I think, impossible to bring other
12 parties into it.

13 On the other hand, the class in which the Canadian
14 Creditors were classified, voted to accept the plan, and I
15 don't -- I have no evidence that they're -- even setting
16 aside that they -- because of that vote this is irrelevant
17 to me legally, under the Bankruptcy Code it might be
18 relevant to a Canadian court of recognition. I don't know,
19 but there's no evidence that they're getting a worse deal
20 than if they had been included in the trust structure.
21 They're getting their pro rata share of \$15 million in cash
22 right away that wouldn't happen but for, I believe, the
23 other aspects of the plan.

24 MR. UNDERWOOD: I think, Your Honor, I just want
25 to make clear that at least the Canadian Creditors view this

1 as a conscious choice by the Debtors in the manner which
2 they classified these Creditors. And ultimately, it's
3 impossible to say how the mediation might have ended. It
4 never even started, and that again there was a conscious
5 choice by someone other than this Creditor.

6 So, ultimately -- I don't want to necessarily
7 belabor this point any further, but it does raise the
8 ultimate implication, which is an issue for this Court and
9 for the United States, which is it would not be a good thing
10 generally for the Canadian (indiscernible) to accept this
11 Court's confirmation of a plan. And specifically with
12 regard to this case, there is no question that that outcome
13 would affect the implementation, I think, of the plan. So
14 it is material, I think, in a larger perspective. I'm
15 willing to move onto jurisdiction.

16 THE COURT: Okay.

17 MR. UNDERWOOD: And essentially, with regard to
18 that -- and even there, it's still a release issue, I
19 suppose. Because what we're really talking -- what I'm
20 talking about is under (indiscernible) Petroleum Network,
21 and I'm sure you're more familiar with the case than I am,
22 what these (indiscernible) are affecting is an involuntary
23 release of a foreign sovereign's, effectively, claims
24 against the U.S. Debtor.

25 Now, in terms of those claims, the proof of claims

1 attached complaints that assert fraud, public, nuisance, a
2 variety of forms of relief. And those are the very same
3 forms of relief that are sought by United States
4 municipalities.

5 In terms of the jurisdiction of this Court to
6 enter a nonconsensual release under Section 1141 of the
7 Bankruptcy Code, I think there is fundamentally -- and this
8 is absolutely without offense to the Court, but I think that
9 there is a jurisdictional question at the outset of whether
10 a non-Article 3 judge actually has that authority.

11 I'll pull very quickly back to the second aspect
12 of this issue, which is, all right, we all agree about what
13 Section 106 specifically says, but what was it really
14 intended to do and what does it really mean in this case?
15 And are there other statutes that abrogate 106 for the very
16 specific purposes of this case? And I think in terms of
17 106, the Debtors, who really don't cite any case law or
18 analysis of 106, I think -- I think the way that I look at
19 106 and the way other courts have looked at Section 106 is
20 that it is to preserve defensive rights.

21 Meaning preserve avoidance actions, preserve, you
22 know, separate Debtor actions against foreign sovereigns so
23 that they can't sneak in and sneak out of the court without
24 having full relief on both sides. But I think here, as I
25 stated earlier, there is no -- there are no such claims that

1 have been asserted. So ultimately, with regard to 106, the
2 -- ultimately, the way that the foreign sovereignty immunity
3 statute actually trumps Section 106 in the Code. To be
4 frank, I couldn't find any law on that either way.

5 And maybe Davis Polk can correct me on that, but
6 ultimately there is no exception under the Foreign Sovereign
7 Immunities Act that would otherwise apply here. So other
8 than filing a claim, which unquestionably my clients had to
9 do, wanted to do, they wanted to participate in this case,
10 it was important that they did it because, frankly, Canadian
11 assets are affected by the proceedings before this Court,
12 and there's no denying that.

13 I think ultimately there's a real question here
14 about whether the Foreign Sovereign Immunities Act, under
15 this very specific factual circumstance, may trump the plain
16 language of Section 106. Because what we're talking about
17 here is really the relationship between two countries, and
18 I'm certain that the people of Canada will not be happy when
19 they come to understand that there is an entire abatement
20 procedure that they were effectively left out of. Maybe
21 that is what it is, but that's fundamentally, I think the
22 Foreign Sovereign Immunities Act jurisdictional Section 106
23 issue before this Court. And I hope I was able to frame
24 that in some fashion.

25 THE COURT: Well --

1 MR. UNDERWOOD: And we'll certainly raise it on an
2 objection.

3 THE COURT: I understand your objection, and I
4 think it really comes down to the Court's, the Circuit
5 Court's, analysis of, first, what is being done when a plan
6 does enjoin the prosecution of a third-party claim; and
7 secondly, whether, by its plain terms, 106(a)(1) and (b)
8 permit that with regard to an entity, a governmental entity
9 that has sovereign immunity.

10 But I will note, though, that the injunction is,
11 as argued by the Debtors and their allies, the committee and
12 the other ad hoc groups that are supporting the plan, serve
13 an integral role enabling any recovery under the plan,
14 including the recovery in Class 11, which is what your
15 clients would have.

16 And again, as far as participating in an abatement
17 program, the -- I have no -- nothing to suggest that the pro
18 rata share of the Class 11 consideration that would flow to
19 the Canadian Creditors that you represent would be anything
20 less than the value of the abatement program that would flow
21 to them, which is, you know, obviously something that, I
22 mean, directly flow to them. To the extent they're right
23 across the border from a state or municipality that has that
24 type of program, there would be some indirect effect, as was
25 testified. But notwithstanding the size of the value that's

1 going into the NOAT and Native American tribes' trusts, when
2 you look at the denominator, if you added your client's
3 claims to it, it's quite possible to me that, even if they
4 had asked to participate in the mediation, and had been
5 included in the procedures, these creditors wouldn't have
6 any aliquot share of that abatement program that would come
7 close to their pro rata share of the cash that they're
8 getting right away that they can themselves apply to
9 abatement.

10 MR. UNDERWOOD: I think, Your Honor -- and it's a
11 funny thing because I have always said I would never, ever
12 listen to a client who says -- that says to me that it's
13 just about money. This isn't just about money, and I think
14 we cannot say because there never was an allocation to
15 Canada as to what it might have received as to these claims.
16 But that be -- I would also say that, and sincerely, very
17 sincerely, the municipalities and First Nation's interests
18 in the Class 4 and 5 programs wasn't just money. They were
19 genuinely interested in the other aspects of the abatement
20 programs that they are also not partaking in.

21 THE COURT: Well, they have every opportunity to
22 use those programs as a model for their own use of the money
23 that they're getting, and frankly to -- if they -- if there
24 are other municipalities that would oppose that, try to
25 convince the court in Canada that the condition of

1 recognition is that the recoveries by Canadian creditors be
2 used towards abatement.

3 MR. UNDERWOOD: I -- I'm sure that someone will
4 make those arguments in Canada before the NCAA. I guess my
5 concern also is that the result of this confirmed plan will
6 be, to a degree potentially, a handcuffing of the Canadian
7 Creditors to recover presuming that they are locked out of
8 any recovery against the U.S. assets. They're not a part of
9 the NOAD or the tribal trust.

10 And presuming that the liquidation value or net
11 sale value of the Canadian entity is then conveyed to those
12 very trusts, which the Canadians are not participating, and
13 presuming that as (indiscernible) --

14 THE COURT: That's a mistake. Your clients, to
15 the extent they have claims against the Canadian entities,
16 can go against the Canadian entities. There's -- they're
17 not being enjoined from doing that. To the extent they have
18 claims against the Canadian entities, they are not being
19 enjoined from proceeding against them. There might be a
20 race to the courthouse on that point, but they have those
21 claims.

22 MR. UNDERWOOD: I understand.

23 THE COURT: There's no doubt about that. So I
24 just --

25 MR. UNDERWOOD: I understand the fundamental

1 difficult position, and I'm greatly appreciative of the work
2 that everyone in this case has done to achieve any kind of
3 result in an otherwise insoluble case. But I think
4 ultimately when we look at the liquidation value of those
5 Canadian assets, they pale in comparison to the U.S. assets.

6 THE COURT: But --

7 MR. UNDERWOOD: Or their treatment of the note. I
8 think ultimately if we believe that the Canadian Creditors
9 will be handcuffed in their ability to collect against the
10 Sacklers under Canadian actions, we've left Canada with very
11 little from this proceeding, and that is what it is. And I
12 told clients that on the first day that I took this case. I
13 think ultimately I appreciate Your Honor's work in this
14 case.

15 THE COURT: Okay.

16 MR. UNDERWOOD: Thank you.

17 THE COURT: Thank you. All right. Any rebuttal?

18 MR. TOBAK: Briefly, Your Honor. The first point
19 I'll note -- and this is Mark TOBAK, Davis Polk for the
20 Debtors, is that oddity that we had earlier in argument that
21 it was illegal for the Debtors to classify states in the
22 United States together with the municipalities of counties
23 within that state. And now we have an argument that it is
24 apparently illegal for the Debtors to classify cities in an
25 entirely different country separately from the states and

1 municipalities in this country. And I think that gets to
2 the point of, you know, it was asked many times why the
3 Canadian municipalities and First Nations are being
4 (indiscernible).

5 THE COURT: You cut out. I'm not sure what
6 happened there. Are you there?

7 WOMAN: (indiscernible)

8 MR. TOBAK: All right. Your Honor, can you hear?

9 THE COURT: Yeah, now I can hear you.

10 MR. TOBAK: Thank you. I don't know where it cut
11 out, but I'll say that the suit (indiscernible) --

12 THE COURT: You got -- you cut out again. Yeah, I
13 think when you move your paper you might mute yourself.

14 MR. TOBAK: Oh. There's a (indiscernible)
15 keyboard underneath my lectern.

16 THE COURT: There you go.

17 MR. TOBAK: Your Honor, I apologize for that.

18 THE COURT: That's fine.

19 MR. TOBAK: In any event, the point is that Canada
20 is a separate country, and that's fundamentally important
21 for many reasons. The most important reason, as Your
22 Honor's already noted, is that there is an independent
23 company, an IAC, in Canada called Purdue Canada, and that
24 entity sells and markets pharmaceuticals in Canada. The
25 importance of the border, which Mr. Underwood asked about,

1 is particularly important in the context of highly regulated
2 pharmaceutical products which are subject to a great deal of
3 regulation in the United States, an entirely separate regime
4 of regulation in Canada under that country's laws. That is
5 why Perdue Pharma does business in the United States and not
6 in Canada.

7 To the point of the Canadian municipalities'
8 desire to participate in an allocation and abatement scheme,
9 fundamentally we hope, as Your Honor has already noted, that
10 perhaps this plan of confirm can be used as a model for a
11 similar scheme in Canada with respect to Canadian
12 municipalities and assets of the Canadian company.

13 I will note, however, that in this plan here, the
14 testimony is that it has taken literally years, including
15 years before Perdue filed for bankruptcy, to develop this
16 plan and to develop an abatement model that was targeted to
17 the communities in this country. It would be entirely
18 inappropriate to attempt to in-graph that model into
19 different communities in the different country under
20 different legal regimes with different allocations of
21 national, provincial, and local responsibilities, and to
22 address different conduct by different companies and solve
23 the different needs.

24 With respect to the jurisdictional point, I think
25 it can't really be said better than 106(a), which

1 specifically provides that it abrogates the sovereign
2 immunity of any governmental entity, including a foreign
3 state with respect to Section 105 of the Bankruptcy Code. I
4 can't find in the Code any suggestion that it is limited
5 only to the assertion of a counter claim by a Debtor.

6 As Your Honor also noted, the jurisdictional basis
7 for this proceeding is a simple, Section 1334, and this is
8 on the basis of any other aspect of a plan being confirmed.
9 With respect to whether there's any case holding that
10 sovereign immunity is abrogated by Section 106, one case is
11 the In re RMS Titanic case, which is at 569 B.R. 825 from
12 the Middle District of Florida 2017 which states that
13 pursuant to Section 106(a), foreign states can no longer
14 assert sovereign immunity from liability under the
15 Bankruptcy Code.

16 And then it notes that Section 106 abrogates
17 sovereign immunity as to a governmental unit. It cites to
18 several cases. One from the Ninth Circuit and others from
19 other bankruptcy courts across the country. I think that's
20 really all there is to say with respect to sovereign
21 immunity other than, also, the fundamental point that the
22 municipalities and First Nations did come to this court and
23 seek to participate in this proceeding, which is also a
24 waiver of whatever immunity they might have had otherwise.

25 Unless Your Honor has any further questions, I

1 think we rest on that and our papers.

2 THE COURT: No, I think that's fine. Thank you
3 both.

4 MR. UNDERWOOD: Your Honor, may I make one comment
5 as to the reference to the RMS Titanic case?

6 THE COURT: Sure.

7 MR. UNDERWOOD: And I think it came through in
8 what counsel said. The RMS Titanic case refers to the
9 liability of a foreign sovereign. It doesn't refer to the
10 taking of a right, and I'll rest on that, and I appreciate
11 it. Thank you.

12 THE COURT: Okay. Thank you. All right. It's
13 1:30. We have probably another two or three hours at most.
14 Does it make sense to take a break for lunch?

15 MAN: Your Honor, that actually is exactly what I
16 was going to suggest. And just for people who are following
17 the hearing, we have the (indiscernible) and Bridges, I
18 think, objection up next, then insurers, then pro ses, and
19 then whatever miscellaneous matters are remaining with
20 respect to the releases. I think the allocated time for
21 those things is actually a little bit under three hours. So
22 hopefully we will be able to keep to that, but we'll see how
23 the afternoon goes.

24 THE COURT: Okay. So I'll come back at 2:30 then.

25 MR. UZZI: Your Honor, if I may, just before we

1 break, I have a comment that I hope is helpful as it relates
2 to narrowing the release a little bit. And again for the
3 record, Gerard Uzzi of Milbank for the Ray Sackler family.
4 Now, I realize, Your Honor, when I made the presentation
5 earlier, I said something, with I meant, and it's a little
6 inconsistent with one of the words on the page, which is
7 there is no release of tax liability. But the carve-out for
8 that is in the definition of excluded claim, and when I went
9 back and checked --

10 THE COURT: But that's been there for a while.

11 MR. UZZI: Well, and it has been, Your Honor. And
12 I realize, though, I said any taxes. What it says in
13 excluded claims is income tax, and we meant any tax. And so
14 we could strike the word income. And just -- I know people
15 are preparing for, you know, possible argument after lunch.
16 And just if that helps simplify things, I wanted to make
17 that announcement prior to the break. That's all.

18 THE COURT: Okay. That's good. Thank you. All
19 right. So again --

20 MR. UZZI: You're welcome.

21 THE COURT: -- we'll come back at 2:30.

22 (Recess)

23 THE COURT: Okay, good afternoon. This is Judge
24 Drain. We are back on the record In re Purdue Pharma LP and
25 the confirmation hearing.

1 The next matter, or next topic rather, of oral
2 argument I believe is the argument on objections filed by
3 Mr. Overton and his counsel to Creighton Bloyd, Stacey
4 Bridges, and Charles Fitch. Creighton Bloyd actually had
5 two objections. The other two people joined with him in
6 one. And I'm sorry, I said Overton. And I apologize, Mr.
7 Ozment, it's Mr. Frank Ozment.

8 So I think the Debtor's counsel is going to go
9 first on this and then we were going to hear from Mr.
10 Ozment.

11 MR. TOBAK: That's correct, Your Honor. For the
12 record, it's Marc Tobak from Davis Polk for the Debtors.

13 Reserving most of our time for rebuttal, I want to
14 make two points with respect to the objections by Mr. Bloyd,
15 Ms. Bridges, and Mr. Fitch to notice provided to
16 incarcerated unknown claimants.

17 And the fundamental point, Your Honor, is that
18 this is not their objection to raise. They do not argue
19 that they were not provided with the adequate notice, and
20 they can't. That would be contradicted by the facts.

21 According to the timestamp on Ms. Bridges' proof
22 of claim, she filed just three days after this Court entered
23 the bar date order in February 2020. And Mr. Bloyd filed
24 his proof of claim in June 2020.

25 Mr. Fitch, by the way, hasn't filed a proof of

1 claim even though he is a plaintiff in an adversary
2 proceeding against the Debtors. And we have been in contact
3 with his counsel since at least January of this year.

4 So their objection to notice is raised on behalf
5 of other parties who, as far as we were aware, Mr. Ozment
6 does not represent in this proceeding, and as far as we are
7 aware, not before the Court. Mr. Ozment's clients,
8 therefore, lack standing to assert the rights of other
9 parties in attempt to thwart confirmation of the plan.

10 And I quote from the Second Circuit's opinion in
11 Kane v. Johns-Manville, which is 843 F.2d 636 at 642,
12 "Generally, litigants in federal court are barred from
13 asserting constitutional and statutory rights of others in
14 an effort to obtain relief for themselves." That rule
15 precludes Mr. Ozment's clients from raising the alleged
16 notice rights of others.

17 Indeed, the Second Circuit's decision in Kane is
18 almost an exact parallel here. There, an asbestos claimant
19 in Johns Manville bankruptcy attempted to appeal on the
20 ground that other asbestos claimants had not obtained
21 adequate notice. The Second Circuit refused to entertain
22 that appeal, and it held that an objector who had himself
23 received notice could not assert the alleged rights of third
24 parties.

25 Judge Newman, for the panel, noted that, "The

1 general rule that third party standing is particularly
2 relevant in bankruptcy proceedings, as parties may often
3 find it personally expedient to assert the rights of others
4 in attempt to block confirmation of a plan." And that quote
5 is from 843 F.2d at 645.

6 I don't doubt the sincerity of Mr. Ozment or his
7 clients. But in this case where his three clients stand,
8 just as in Kane, opposed to over 95 percent of the voting
9 creditors in their class, opposed to the statutory
10 fiduciary, all unsecured creditors, and also opposed to the
11 Ad Hoc Group of individual victims, there is more than
12 sufficient reason to conclude that his clients lack standing
13 to assert the rights of others.

14 I also briefly note that the objection was quite
15 untimely. Your Honor approved the Debtor's extraordinary
16 and exhaustive noticing program in February 2020. And that
17 program was expanded through the extended bar date order,
18 which is at Docket 1221, on June 3rd, 2020. And as Ms.
19 Finigan testified earlier, the Debtors engaged in yet
20 another additional and extensive noticing program in
21 connection with the confirmation hearing. And that was
22 approved on June 3rd of this year at Docket 2988 in the
23 exposure statement order. Mr. Ozment and his clients never
24 before raised these issues until filing their objections on
25 July 19th.

1 With all respect, had they wished to alter the
2 notice program rather than belatedly point to it as an
3 obstacle to confirmation, it could have been raised earlier
4 at a time in 2020 or 2021 when it might have -- when things
5 might have been changed.

6 With that, I will reserve the rest of our time for
7 rebuttal.

8 THE COURT: Okay. Do you want to -- there is a
9 second declaration. Are you going to deal with that
10 separately? A second objection by Mr. Creighton.

11 MR. TOBAK: I believe we addressed all -- both the
12 Bloyd and Bridges and --

13 THE COURT: I'm sorry, Mr. Creighton Bloyd.

14 MR. TOBAK: Mr. Bloyd, correct. So that's the one
15 at -- I think it's Docket 3277.

16 THE COURT: Right.

17 MR. TOBAK: We'll rest on our papers with respect
18 to that unless the Court has any questions and rebuttal to
19 Mr. Ozment's argument.

20 THE COURT: All right. So you're reserving
21 rebuttal on that one. Okay.

22 MR. TOBAK: Correct. Thank you.

23 THE COURT: Okay. All right, Mr. Ozment.

24 MR. OZMENT: Your Honor, thank you. This is Frank
25 Ozment, and I represent Creighton Bloyd, Stacey Bridges, and

1 Charles Fitch.

2 With respect to the Article Three and case or
3 controversy issue, I'm not familiar with the case that he
4 cited. But I would point that we are not bringing a case or
5 controversy here. There is a case or controversy already.
6 I think, you know, the power of Congress to regulate
7 bankruptcy under Article 1, Section 8, is really what this
8 is about, is our coming in and saying, you know, we don't
9 think this is fair.

10 With respect to Ms. Bridges in particular, while
11 she is not presently incarcerated, she certainly has been.
12 And, you know, that threat remains. So to the extent that
13 there is some issue there, perhaps it's capable of
14 repetition but (indiscernible).

15 The more important thing I think is to get to the
16 heart of what we're saying here. And I normally don't read
17 a closing argument to a judge, but in the interest of time,
18 I wrote this one down.

19 In Mullane v. Central Hanover, the court
20 recognized that due process requires a debtor to give notice
21 to a creditor before the creditor's claims could be
22 extinguished. If the identity of the debtors and their
23 whereabouts are unknowable, then those can be by
24 publication. If the identity and whereabouts are reasonably
25 ascertainable, the creditor cannot rely merely on those by

1 publication absent some other extraordinary circumstances.

2 Over the years, courts have recognized that
3 creditor (indiscernible). The creditor has a lien, the
4 debtor generally has to do a little more. The creditor is
5 unsecured perhaps by publication by notices where acceptable
6 if the creditor is unknown.

7 Here, there is no doubt, and Christina Pullo
8 testified about it in her declaration but also in cross, the
9 Debtors made a herculean effort to notify a lot of people.
10 And to a large extent, they appear to have succeeded, with
11 one very notable exception.

12 Their efforts were focused on people in the free
13 world, not so much people in prison. Normally, this might
14 not matter much. In an ordinary case, notice provided to
15 the free world might leak over into the incarcerated world.
16 And if this were a case about promissory notes and the
17 creditors were all banks, well, you wouldn't expect to find
18 too many creditors in prison, or at least in federal prison
19 -- I'm sorry, in state prison.

20 But this is not a normal case. This is a case
21 about addiction. Addiction drives people to crime, and
22 everybody knows that. Prisons are disproportionately likely
23 to house people suffering from addiction. Moreover, this
24 was noticed during a period in American History that was
25 very nearly unique. A pandemic, when common sense dictates

1 that the public not go in and out of prisons, which of
2 course are places where social distancing is pretty much
3 impossible.

4 While Ms. Pullo I think gave very good testimony
5 and certainly put some of my concerns (indiscernible) notice
6 of the free world, it was also clear from her testimony that
7 the Debtors did very little to alert prisoners in particular
8 about the need to file claims.

9 This is particularly unfortunate in this case --
10 and this goes somewhat to Mr. Bloyd's objection, Your Honor
11 -- because victims should have been lienholders under the
12 Mandatory Victims Restitution Act. The United States and
13 the Debtor basically agreed that victims would not get their
14 rights under the MVRA because it would take too long to
15 figure out who they were or just generally to calculate what
16 they would receive.

17 And at this point, I want to emphasize that was
18 not a proceeding in which Davis Polk represented the
19 Debtors.

20 Ultimately, that issue may be a matter for the
21 sentencing court to revisit. It may ultimately be something
22 that Congress wants to take up. But in the meanwhile, that
23 deprivation of lienholder status and that effort to ignore
24 the rights of victims under the MVRA -- sorry about that,
25 Judge -- aggravates this situation that we (indiscernible).

1 Personal injury victims might argue that their
2 liens should prime those of the (indiscernible) states.
3 Right now, we are merely trying to avoid the injury that
4 resulted from the lack of notification. Interestingly --
5 well, I'll just skip that point.

6 There is a solution to all this, although this not
7 be the time, place to take it up. Bridges and Bloyd filed
8 proofs of claim on behalf of all people similarly situated
9 to them. That is to say living former opioids addicts who
10 are in active recovery. Perhaps allowing their claims to
11 serve as timely filed proofs of claim will overcome the
12 (indiscernible) notice, especially for those who are locked
13 up.

14 As a practical matter, this may not mean much from
15 the perspective of outsiders in the free world. For
16 prisoners, however, the recovery of amounts as low as \$3,500
17 is life-changing. It can pay off fines, pay the fees
18 necessary to get into community corrections, or pay child
19 support.

20 But, again, the proof of claim issue is not before
21 the Court today. We have filed a motion to allow those
22 proofs of claim to be treated as adequate for satisfying the
23 bar date. However, we don't have a hearing date on that
24 yet. I thought we did, and I called Ms. Li yesterday and
25 she said she didn't (indiscernible).

1 The issue today is whether the Debtors proved that
2 they provided notice to one of the most densely-concentrated
3 populations of opioid use disorder victims in the nation,
4 that is to say the men and women who are incarcerated. I
5 don't think it's very hard to find those people. They have
6 publicly-listed addresses. At each address, the
7 concentration of victims is high.

8 I respectfully submit, and somewhat reluctantly
9 submit in light of all the work that's gone into this case,
10 that confirmation should be denied unless and until the
11 Debtors are going to get or allow the prisoners formally to
12 file late claims.

13 And that ends my written statement, Your Honor.
14 And with respect to Creighton Bloyd's objection, I will tell
15 you that I filed that because I felt as if I did not file
16 it, then I would not be able to take it up with the United
17 States District Court when sentencing is concluded. I don't
18 know, quite frankly, that there is much that you can do
19 about that in this proceeding, but I did feel like it had to
20 be (indiscernible). And I'll be glad to take questions on
21 it if you like.

22 THE COURT: Well, I have reviewed the Mandatory
23 Victims Restitution Act. I don't think I have questions on
24 it. And ultimately that is an act that applies I think at
25 the sentencing stage. So I don't think I have any questions

1 there.

2 As far as the notice point is concerned, I think
3 standing is probably an absolute barrier here since it does
4 not seem to me that Creighton Bloyd or Ms. Bridges or Mr.
5 Fitch have an injury to be addressed by the relief sought in
6 the first objection to them. So I don't think I have
7 questions, Mr. Ozment.

8 MR. OZMENT: Thank you, Your Honor. That's it for
9 me.

10 THE COURT: Okay. You're on mute.

11 MAN: Yes. I see Mr. Shore has joined, and I
12 defer to him if he wishes to respond to any points regarding
13 the treatment of personal injury claimants under the TDPs.

14 MR. SHORE: Two points, Your Honor. It's Chris
15 Shore from White & Case on behalf of the Ad Hoc Group of
16 personal injury victims, which includes 55,000 individuals,
17 including incarcerated individuals.

18 It's unclear to me what the status is of the full
19 objection. We've heard some argument today on it. I'd like
20 to address the class proof of claim issue because I think to
21 some extent what is happening today, or if the Court
22 confirms the plan is going to affect the class claims
23 status. Two, to address the claims and the objections that
24 somehow either of the TDPs is disproportionately unfavorable
25 to incarcerated individuals or otherwise does not take into

1 consideration their unique circumstances.

2 On the first point, the TDPs, which are plan
3 supplements -- I think the 16th plan supplement was just
4 filed -- the Court will be approving those. Those require
5 that anybody who receives money from the TDP has an
6 individual proof of claim on file.

7 So while Mr. Ozment is saying he wants to reserve
8 the right to seek class treatment, he hasn't done it yet.
9 And if you -- without getting too far into it, the Musicland
10 factors that would go into whether or not that claim would
11 be filed, it would certainly be our position that the
12 allowance of a class proof of claim, which would, according
13 to the papers, take the personal injury class from 135,000
14 individuals to 1.5 million individuals, would affect the
15 administration of the estate going forward because the whole
16 TDP gets upended, distributions are made uncertain, and
17 you're going to have to change a central feature of the TDP,
18 which is that it's being done on an individualized basis.

19 So, you know, while I appreciate he's not pressing
20 and not seeking today class treatment for the claims, we are
21 going to have some distinct views with respect to whether
22 that would ever be appropriate.

23 But to be clear, I don't think the objection is
24 that the TDPs as drafted were drafted in bad faith. I think
25 the point Mr. Ozment was making in the objection was it

1 doesn't take into consideration the unique facts of
2 incarcerated individuals.

3 And I hope Your Honor can see from the TDPs and
4 what have been said about them, there was a great deal of
5 thought and effort that was put into balancing the due
6 process issues on the one hand with code requirements and
7 the need to get money out to individuals in a timely
8 fashion. And to some extent, it was a zero sum game. The
9 more money that's spent on process, the less money there is
10 to distribute at the end of the day.

11 The -- one of the central premises of the TDPs is
12 the requirement under the Code that people file proofs of
13 claim. And the TDP, the notice in the TDP backs off of the
14 Debtor's incredible notice program, both at the -- or with
15 respect to both bar date times.

16 Even so, there are provisions in the TDP which
17 allow individuals with late filed claims to either come to
18 the Court and seek relief under Rule 9006 or go to the
19 claims administrator, who has authority in his or her
20 discretion to allow the claim as timely. And that's
21 Footnote 6 in the non-NAS TDP.

22 So there's nothing discriminatory against
23 individuals who are incarcerated. They have the same right
24 and ability to file a late claim as anybody else. Nor is
25 the actual claims process discriminatory. Every claim under

1 the Code is required to be substantiated with proof.

2 There are two -- and maybe Mr. Ozment can address
3 it with more specificity. There are two ideas I think
4 buried in the concerns of incarcerated individuals. One is
5 it just takes them longer to get the health records that are
6 necessary to substantiate their claims. Again, under the
7 TDP, the claims administrator has discretion to elongate the
8 deadlines for any given individual. That's Footnote 8 in
9 the non-NAS TDP. So there is already built-in flexibility
10 to the extent it's a question of timing.

11 We extended the question of being able to gain
12 access to records at all, which is an issue faced by some
13 incarcerated individuals. Again, the TDP provides that if
14 the individual is not able to gain access to their medical
15 records, they can file declarations to that effect and make
16 the necessary showings to obviate the need for their actual
17 medical records to substantiate.

18 So, you know, I'm not sure what else we can do
19 consistent with the law and the Code to relieve the
20 obligations that exist under the Code with respect to people
21 having to file proofs of claim and people having to
22 substantiate proofs of claim with proof. Because we just
23 can't have a TDP in which any individual can come forward
24 without any proof and take money out of the PI trust that is
25 otherwise slated for real individuals with real proof and

1 real harm.

2 THE COURT: Okay. Thank you.

3 MR. OZMENT: Your Honor, may I briefly address
4 that?

5 THE COURT: Well, I just want to make sure -- do
6 the Debtors have anything more to say on this point, or
7 shall I just hear briefly from Mr. Ozment?

8 MAN: With regard to the TDPs, no. With regard to
9 notice, while Your Honor's ruling with respect to standing
10 probably disposes of the issue, just given the importance of
11 notice and its scope of notice provided, I want to note just
12 two points if that's appropriate right now.

13 THE COURT: Okay.

14 M: The first is that under the law, constructive
15 notice by publication is sufficient notice to unknown
16 claimants. It's not accurate to say that everyone who is
17 incarcerated was provided notice through a constructive
18 means such as publication or television or other forms of
19 ads. To the contrary, any known claimants, as is set forth
20 in Ms. Finigan's declarations, were provided with actual
21 notice by mail.

22 Secondly, in response to a question from Mr.
23 Ozment in the hearing, she testified that there was actual
24 specific outreach by mailings directed to prison outreach
25 organizations and to entities responsible for the management

1 of prison facilities, which is set forth in her testimony of
2 August 12th, 2021 at Transcript, Page 76, Lines 10 through
3 18.

4 And the third point builds off those two. And on
5 the other hand, we don't have any record evidence to support
6 Mr. Ozment's and his clients' assertions regarding the scope
7 of notice and what is or isn't available in prisons. And
8 while, again, we don't doubt the sincerity of any of them or
9 in any way discount the importance of providing relief to
10 those who are incarcerated, on the other hand, there just
11 isn't record evidence of those assertions. And with that,
12 we rest on our papers.

13 THE COURT: Okay.

14 MR. OZMENT: Your Honor, first, a quantitative
15 issue. This would not amount (indiscernible) the claims.
16 There are roughly 1.2 million in physical custody of state
17 prisons. And, you know, roughly 20 percent of those
18 probably use opioids even while in custody. But that
19 doesn't mean that they product manufactured by Purdue. So
20 we're not talking about flooding the trust with those
21 claims.

22 With respect to the issue regarding trust
23 distribution procedures, we are not asking for relief on it.
24 As a practical matter, by the time a prisoner arrives in
25 prison as opposed to jail, the people who run those

1 correction facilities know pretty much everything there is
2 to know about them. And so hopefully to the extent that
3 people have had an opioid use disorder, problem that's well
4 known, and also perhaps even a level of what drug was it.
5 So, for example, you know, some drug courts will keep up
6 with, you know, was it OxyContin, Lortab, what led you
7 astray.

8 So we're not asking for relief on it. But as a
9 practical matter, as you saw in the hearing involving
10 Augustus Evans earlier, I think it was last week, you know,
11 prisoners need help navigating this. And it's very
12 difficult to motivate and engage people to help them,
13 especially volunteers, when, you know, it could be sort of a
14 dry well and in the discretion of my fellow bar member here
15 in Birmingham, who is a fine fellow, Ed Gentle, who is the
16 claim administrator.

17 I think, you know, we're going to get people
18 engaged in helping these folks, as we did with voting rights
19 issues and things of that nature. They need to have some
20 understanding that, you know, if you get your stuff together
21 and it's in order, you're not totally wasting your time.
22 Otherwise, these claims are not going to get filed. It's
23 just going to be too overwhelming for them.

24 And finally, in terms of filing a proof of claim
25 late and so forth, one of the last things in the world we

1 want to do is snow the Court, or Mr. Gentle, or anybody else
2 with a ton of paperwork on whether somebody should be
3 allowed to file a late claim.

4 What we're talking about here is just one
5 (indiscernible). Okay? We're not asking for the right to
6 vote as we did -- as one of the earlier petitioners did.
7 We're just saying there's a problem with notice. And it
8 needs to be addressed so that those people who are, you
9 know, perhaps not as poignant and heart-tugging as some of
10 the other stories, can file claims where it's appropriate.

11 So much of this is getting ahead of ourselves. But
12 since we touched on this issue, I wanted to clarify that
13 we're not, you know, going (indiscernible).

14 THE COURT: Okay. Thank you. All right, thank
15 you both.

16 I think the next topic that is on is objections by
17 certain insurers to either aspects of the plan or proposed
18 aspects of the confirmation order. And the Debtors, again,
19 will go first, as will the -- they will be followed by the
20 Ad Hoc Committee of Certain States and Other Governmental
21 Entities. And then we'll hear from Navigators' counsel, I
22 think Mr. Anker.

23 So who is going to be speaking on behalf of the
24 Debtors on this?

25 MR. SINGER: Good afternoon, Your Honor. It's

1 Paul Singer from Reed Smith on behalf of --

2 THE COURT: Okay, afternoon.

3 MR. SINGER: Thank you, Your Honor. We are
4 special counsel -- special insurance counsel to the Debtors.
5 I will be (indiscernible) with provisions of Section 510 of
6 the plan, which we believe as written is appropriate and
7 consistent with applicable law. Emily Grim will be speaking
8 on behalf of the AHC and will address the findings of fact
9 and the conclusions of law to which the insureds have
10 objected.

11 Section 526(I) of the plan, Your Honor, provides
12 that the Master Disbursement Trust will receive the Debtor's
13 rights under any insurance policy that may -- and I
14 emphasize may -- provide coverage for opioid claims.

15 The purpose of the transfer is to enable the MDP
16 to pursue recoveries under the Debtors' policies, and if
17 successful, would distribute any proceeds recovered to
18 opioid creditors pursuant to (indiscernible) the plan.

19 This arrangement is typical of those found in mass
20 tort cases. The assignment of insurance rights has been
21 proved under Section 1123.05, most notably by the Third
22 Circuit in the Federal Mogul case.

23 To be clear, the plan does not require any
24 findings as to the value of the insurance or the extent to
25 which the policy would actually cover opioid claims. But

1 the plan does seek findings intended to insure that the plan
2 itself doesn't somehow create additional risk to recover
3 that the Debtors would not have faced prepetition. For that
4 reason, the plan includes language in Section 510 that
5 confirms, consistent with applicable law, that this Court's
6 findings are binding on insurers but then any other defenses
7 to coverage insurers may have are preserved.

8 According to certain insurers, they should be
9 entitled to argue in first confirmation coverage litigation
10 that keep components of the plan vitiates coverage. Under
11 objection, they assert that the plan would insulate them
12 from any aspects of the plan or the confirmation order that
13 may be detrimental to these arguments. They make these
14 assertions notwithstanding the understanding the adversary
15 proceeding that findings of the Court would be binding on
16 them in the coverage litigation.

17 Quite simply, the law does not permit the insurers
18 to undermine the plan's settlement framework, but to use it
19 as a basis to stake their coverage obligation. To the
20 contrary, the Bankruptcy Code, the policies underlying it
21 that the parties should negotiate a plan that settles
22 claims, and the insurers' own policies, may of which contain
23 provisions that, notwithstanding the bankruptcy of the
24 insured, they remain in effect. All of that prohibit the
25 insured from seeking an exemption from the (indiscernible)

1 of the plan, the confirmation order for the Bankruptcy Code.

2 To be sure, neither the Bankruptcy Code nor its
3 prior iteration in 1898 or 1939 requires the inclusion of
4 the broad neutrality language sought by the insureds.

5 Indeed, the term neutrality as used by the insureds is a
6 misnomer. What the insurers are seeking are special
7 exemptions from rulings that are otherwise binding on them
8 as they would be on any other party in interest. There is
9 no law saying matters that are decided in connection with
10 the plan confirmation can't be used in a subsequent
11 insurance coverage action. Indeed, Your Honor confirmed
12 this we believe in the insured's adversary proceeding --

13 WOMAN: Quiet. I think they heard me yell.

14 MR. SINGER: Am I being heard, Your Honor?

15 THE COURT: People should keep their phone on mute
16 unless they are speaking.

17 MR. SINGER: As I was saying, the principle that
18 plan confirmation orders can be used in other proceedings is
19 longstanding. Discharge orders are often used with effect
20 to the release of claims under a plan in a state law
21 proceeding. And indeed, free and clear orders likewise
22 issued under Section 363 are often used in state court
23 proceedings to demonstrate that there's no success or
24 liability.

25 The carveout that the insurers seek here, if you

1 call it neutrality, was developed in the early 2000s in the
2 Combustion Engineering and Pittsburgh Corning cases as a
3 tool to limit the ability of a debtor's (indiscernible)
4 frustrate or delay the plan confirmation process.

5 Indeed, each of those cases went to the Third
6 Circuit several times, and the Pittsburgh Corning case took
7 over a decade to get to confirmation.

8 The neutrality language that the insurers seek
9 indicate that they would have no -- the confirmation would
10 have no impact on their rights. And by that, they would be
11 deprived of standing to object or interfere with
12 confirmation. Such provisions (indiscernible) on the
13 specific considerations of each case. Here, no one has
14 concluded the insureds are deprived of standing. Indeed,
15 they have appeared and are being heard here.

16 As such, as any other party in interest, the
17 insurer should not be able to deny the existence of a plan
18 confirmed by this Court in conformity with the Bankruptcy
19 Code and the findings by this Court contained in the order
20 approving the confirmation and the settlements embodied in
21 the plan. Accordingly, we believe that the language as set
22 in Section 510 of the plan is appropriate and
23 (indiscernible).

24 Unless the Court has questions, I would like to
25 turn the podium over to Ms. Grim on behalf of the AHC.

1 THE COURT: I don't think I have any questions for
2 you, Mr. Singer. If I have questions, it goes to -- or they
3 go to what besides the transfer of the policies to the
4 trust, to the MDT, are the Debtors and their allies seeking
5 to put in the confirmation order. But I think Ms. Grim is
6 going to discuss that.

7 MR. SINGER: If she doesn't, I can come back to
8 it, Your Honor. Thank you.

9 THE COURT: Okay, fine.

10 MS. GRIM: Thank you, Mr. Singer. And good
11 afternoon, Your Honor. Emily Grim, Gilbert LLP, counsel to
12 the Ad Hoc Committee of Governmental and Other Contingent
13 Litigation Claimants.

14 Your Honor, the Debtors have included a number of
15 findings and conclusions in the proposed confirmation order
16 that are necessary to preserve the value of the insured's
17 rights being transferred to the MDT.

18 We provided Your Honor with a list of these
19 findings in Exhibit A in our joint reply to the insurer's
20 confirmation objections, so I won't read them word for word
21 unless you'd like me to. But generally speaking, they
22 provide that the settlements embodied in the plan are
23 reasonable and were negotiated in good faith, that the
24 insurers had notice and an opportunity to participate in the
25 negotiations, and that the negotiation and resolution of the

1 Debtor's liabilities through these bankruptcy proceedings
2 shall not excuse any insurer from its coverage obligations,
3 regardless of any contrary policy terms.

4 The purpose of these findings is to ensure that
5 nothing about the plan itself or the Debtor's actions in
6 negotiating and proposing the plan diminishes the value of
7 the insurance assets being transferred to the MDT.

8 Now, certain of the Debtor's insurers have argued
9 in their plan and confirmation objections that this Court
10 can't issue these rulings. Their view is that they should
11 be entitled to argue in coverage litigation that key
12 components of the plan release them from any and all
13 liability under the policies.

14 One of the defenses that they've specifically said
15 that the plan must preserve for them, that the plan's
16 settlement of the opioid liabilities violates the policy's
17 consent to settle provisions. They argue that these are
18 just your typical, non-core, state law based coverage
19 defenses, and therefore that they must be decided in the
20 insurance adversary proceeding and not here. We would argue
21 that that's not accurate for a number of reasons.

22 The first, these findings don't require the Court
23 to rule on garden variety coverage disputes. They don't
24 require the Court to rule on whether the policies provide
25 coverage for opioid liabilities, they don't require the

1 Court to determine the value of any such coverage. What
2 they seek is a determination that the insurers cannot
3 disclaim coverage based solely on the Debtor's actions in
4 this bankruptcy or on the contents of the plan itself.

5 We would argue that that's an issue that's
6 inextricably intertwined with the Debtor's ability to
7 marshal, preserve, and distribute their assets to creditors,
8 satisfaction of their liabilities, and that it couldn't
9 exist outside of bankruptcy. That makes them core issues
10 properly decided by this Court as part of confirmation and
11 not, for example, by a Bermuda arbitration panel considering
12 coverage disputes post-confirmation.

13 The second reason that these findings are
14 appropriate for confirmation is that they are required by
15 the plan. The Ad Hoc Committee and the other creditors that
16 voted in favor of the plan did so with the understanding
17 that the MDT will be entitled to access the same rights to
18 coverage as the Debtors for the opioid liabilities.

19 Now, they agreed to take on the risk that insurers
20 could raise garden variety coverage defenses. For example,
21 that an occlusion bars coverage for the claims. But they
22 did not agree to take on the additional risk that the plan
23 itself would destroy the value of the insurance asset. And
24 in fact --

25 THE COURT: Could I interrupt just for a second?

1 MS. GRIM: Of course.

2 THE COURT: Sorry, you can go ahead.

3 MS. GRIM: Of course. They negotiated language in
4 the plan specifically intended to protect against that risk.
5 And I'll give you some cites.

6 Section 9.10 of the plan requires that the
7 confirmation order contain a finding that the insurance
8 rights transfer is effective, notwithstanding any policy
9 provisions to the contrary.

10 THE COURT: Can I interrupt you? I understand
11 this is a negotiated provision of the plan. But if it -- if
12 that violates the Bankruptcy Code in some way, then it
13 doesn't matter, right, other than that the parties'
14 intentions with regard to the plan are frustrated. It
15 doesn't --

16 MS. GRIM: Yeah. I think Your Honor has to
17 determine -- sorry.

18 THE COURT: The argument to override this is
19 really the argument under 1123(a)(5) and the caselaw.

20 MS. GRIM: That's correct, Your Honor.

21 THE COURT: Okay.

22 MS. GRIM: Section 5.6(I), just to give you the
23 other cite in the plan so that you have it, requires that
24 the confirmation order contain findings necessary to
25 preserve the MDT insurance rights. These provisions have

1 been in the plan since its inception. And omitting the
2 findings they require would be a material change to the
3 plan.

4 A third reason these findings are appropriate is
5 that they are consistent with the Bankruptcy Code and the
6 policies underlying it. The purpose of the Code, as Your
7 Honor well knows, is to enable debtors to use their existing
8 assets to resolve liabilities promptly and efficiently.

9 If insurers were entitled to control a debtor's
10 settlement of its liabilities in bankruptcy, that would
11 frustrate that purpose. It would give insurers, who have no
12 fiduciary obligations to the estate and who, frankly, have
13 every incentive to use the reorganization process to delay
14 or minimize their coverage obligations, an effective veto
15 right over the plan.

16 Accepting the insurers' argument would mean that
17 this Court is powerless to prevent a debtor's insurers from
18 frustrating the Chapter 11 process, and we just don't think
19 that's an outcome that the Code contemplates here. We think
20 that's the very reason Congress gave bankruptcy courts tools
21 like Section 1123(a)(5) to be implemented into the plan.

22 I would also like to address briefly the insurers'
23 reference to other cases where the plan and confirmation
24 order may have, for whatever reason, preserved all coverage-
25 related issues (indiscernible) confirmation. And I have two

1 responses to that.

2 The first is I think there is emphasis that not
3 all plans have preserved coverage issues for resolution
4 post-confirmation. The Babcock case we cited in our reply
5 to the insurer's plan objections included findings in the
6 confirmation order that the plan did not violate any consent
7 to settle provisions.

8 Second, these other cases cited by the insurers
9 are largely irrelevant because every case is different. I
10 can't really speak to the specific considerations at issue
11 in those cases, but I can tell you that the findings the
12 Debtors seek here are critically important to this plan
13 because of its unique abatement-based trust structure.

14 If you look at the more traditional asbestos trust
15 structures, claims typically are channeled to a trust, and
16 then the trust liquidates and pays individual claimants post
17 confirmation. So in that scenario, if the insurers
18 (indiscernible) about what the claims were worth or whether
19 the trust's award was reasonable, the parties would have an
20 opportunity to litigate that dispute and its impact on the
21 coverage post-confirmation.

22 But here, there is no post-confirmation
23 liquidation process for most of the creditors' claims.
24 There is no point, for example, at which NOAD is going to be
25 valuing individual claims. So there's really no other

1 opportunity for the insurers and the MDT to establish the
2 value of any liabilities dissolve by the plan or the
3 reasonableness of that resolution. So that's why any
4 dispute should be resolved here during confirmation and why
5 this Court's ruling on these issues should be binding on the
6 insurers.

7 As Your Honor knows, we have addressed the
8 insurers' objections to specific findings and conclusions in
9 our papers. So in the interest of time, I'll just address
10 any specific findings on which you have questions. But
11 before I do that, I do have one issue I would like to clean
12 up the record for. And that is on the finding that you
13 referenced earlier on the assignment of insurance rights.

14 The insurers seek to modify Confirmation Order
15 Finding LE, which states that the Bankruptcy Code authorizes
16 the transfer and vesting of the MDT transferred assets
17 notwithstanding any terms of the Purdue insurance policies
18 or provisions of non-bankruptcy law.

19 The objecting insurers have asserted that since
20 they previously notified the Debtors that they don't object
21 to the transfer of the MDT insurance rights, the Court
22 shouldn't render what they call an advisory ruling regarding
23 the Code's authorization of such transfer. Instead, they
24 propose a finding that basically says the objecting insurers
25 have not challenged the validity of the transfer.

1 In our joint reply to the insurers' confirmation
2 objections, we noted that a ruling on this issue would not
3 be advisory because another insurer, Chubb, had objected to
4 the transfer. We understand that Chubb has formally
5 withdrawn its objection on that point, so we do want to make
6 the record clear on that.

7 But I do think it's important to emphasize that
8 this withdrawal doesn't obviate the need for the finding.
9 The finding addresses a crucial component of the plan,
10 including in the confirmation order, and a condition
11 precedent to plan confirmation. And in addition, the
12 language proposed by the certain insurers doesn't indicate
13 universal commitment from all insurers, including those
14 insurers subject to Bermuda arbitration who have not
15 appeared at confirmation. So it really just doesn't provide
16 sufficient protection for the Debtors (indiscernible).

17 So I will pause now to address any questions Your
18 Honor might have. And otherwise, I'll save any of my
19 remaining time for rebuttal.

20 THE COURT: Okay. I think it's probably better to
21 hear from Mr. Anker first and then I'll see if I have
22 questions for you if you want to raise anything in rebuttal.

23 MS. GRIM: Thank you, Your Honor.

24 THE COURT: Thanks.

25 MR. ANKER: Thank you, Your Honor. Philip Anker,

1 Wilmer Cutler Pickering Hale & Dorr, for Navigators. Can
2 you hear me okay, Your Honor?

3 THE COURT: Yes, fine. Thank you.

4 MR. ANKER: I am in a -- I apologize, Your Honor.
5 I am on the West Coast. Came out for a niece's wedding.
6 And so I'm in a hotel. And if the connection gets bad, I
7 will do my best.

8 Your Honor, I am not in the habit -- and this will
9 be the first time when I quote Admiral James Stockdale, who
10 Your Honor may remember was Ross Perot's vice presidential
11 candidate I think in '92, when at his debate, he said in a
12 puzzled way that looked like it wasn't rhetorical, "Why am I
13 here?" He got crucified for that, and I think that was
14 unfair. History has shown it. But I am raising it as a
15 rhetorical question, at least in part, because I don't know
16 why we are here.

17 You have lots of complicated issues to resolve,
18 and I echo the sentiments that someone had expressed earlier
19 that, frankly, this is a case about the public interest more
20 than a typical commercial bankruptcy.

21 Insurance coverage, however, is not one of the
22 issues. And frankly -- and I will say this and it's not
23 directed at Mr. Singer, it's not directed personally at Ms.
24 Grim, it's certainly not directed at Davis Polk. But what I
25 think we are fundamentally about here is an attempt by the

1 Gilbert firm and for coverage reasons to get precedent for
2 other cases not before you where there are in fact tricky
3 issues. There is nothing here that warrants the Court's
4 intervention.

5 Let me start with the plan, which I hope I can
6 deal with quickly, and then move to the findings and
7 conclusions, which I think are where Your Honor is
8 principally focused.

9 What I didn't hear Mr. Singer address was the
10 basic point. We are prepared to live with the language --
11 we suggested a minor tweak, a minor tweak -- the language
12 that was in the plan that went out to vote. This is not our
13 language. I agree, insurers have sometimes asked for five
14 pages on insurance neutrality. The Debtor went out with a
15 single sentence in their Fifth Amended Plan. That sentence
16 we are prepared to live with. As I said, we asked for one
17 tweak to it, which was to add a sentence that made it clear
18 what we think Your Honor already said in the ruling in the
19 adversary that while Your Honor would be making findings,
20 the legal consequences of those findings for coverage would
21 be for another day.

22 We made that clear to the Debtors on July 5th. We
23 did not hear from the Debtors until they actually filed,
24 they actually filed their Sixth Amended Plan very late on
25 the night of the 15th. I saw it for the first time on the

1 morning of the 16th when I got up. And it was a complete
2 rewrite. Instead of saying nothing in the plan, the plan
3 documents or the order will one way or the other have any
4 affect on the rights or obligations of the insurance
5 companies or the rights or obligations of the Debtors, they
6 then said, provided, however, everything can change it. The
7 plan can change it, the plan documents can change it. Any
8 order Your Honor has entered at any point in time in this
9 bankruptcy, any order in other litigation can change it.

10 And think about that for a moment, Your Honor.
11 Most of the plan documents we have not seen yet. They are
12 going to be filed with -- ultimately at the time it's
13 defined to include any document necessary when the plan goes
14 into effect or to have it go effective.

15 There are provisions in documents that have
16 already been filed that state, for example, that insurance
17 policies provide coverage, something we may well dispute
18 given products exclusions and the like. There are
19 references to policies that we think were -- in fact at
20 least some insurers think were settled and released long
21 ago.

22 Think about every order Your Honor has entered. I
23 have not, I will confess, followed this bankruptcy. One of
24 the things that I think may be lost here is that until the
25 adversary was filed, which was in 2021, no insurer thought

1 that this bankruptcy affected them at all because, frankly,
2 given the products exclusions, my client and every other
3 client thought that there would never be an attempt to get
4 coverage here. You will hear the merits of that later. But
5 I don't know what happened in 2020 in various adversaries or
6 other cases, yet their language would cover that.

7 So we ask that you simply go back to and the
8 Debtors go back to the language they had when they solicited
9 acceptances of the plan. We have suggested a tweak. I will
10 leave it to Your Honor whether it's appropriate or not. But
11 frankly, the main issue there is just the basic language
12 that went out in solicitation. And no one can argue on the
13 other side the new languages required for confirmation, but
14 the creditors overwhelming voted in favor of confirmation
15 with the original language, and no one is suggesting that
16 anyone is changing their vote, and no one is going to make
17 that suggestion and file the motion and seek relief.

18 With that, unless Your Honor has questions, I
19 thought I might move to the findings and conclusions. First
20 --

21 THE COURT: Could I --

22 MR. ANKER: Sure.

23 THE COURT: And maybe this goes to the findings
24 and conclusions point. But the first sentence that -- or
25 the first question that the Admiral asked was who am I. And

1 then he said why am I here. And Ms. Grim has said that you
2 don't represent all of the insurers. In fact, there are
3 other insurers that are covered by arbitration agreements.
4 Am I right about that?

5 So when I hear you talk about the revised language
6 for the proposed findings of fact and conclusions, that's
7 just from your clients, right?

8 MR. ANKER: Your Honor, let me try to take that
9 on, the language with respect to the transfer or assignment
10 of the policy. First, I represent Navigators, but I have
11 been asked to argue on behalf of all objecting carriers. So
12 none of the other carriers objected, including the ones in
13 the arbitration. I also think -- and I will ask coverage
14 counsel to correct me if I'm wrong -- they have -- and I
15 think they've proposed this to Your Honor, to have a stay of
16 the arbitration until and unless Your Honor, or if the
17 reference is withdrawn, the district court, decides the
18 insurance coverage action.

19 But the language we have proposed with respect to
20 the transfer issue would specifically --

21 THE COURT: So much for arbitration being fast and
22 efficient. But go ahead.

23 MR. ANKER: Your Honor, on that point I'm not
24 going to disagree with you. But let me just read to you the
25 last sentence. And this is our language. Your Honor, I

1 don't know if you have it in front of you.

2 THE COURT: I do.

3 MR. ANKER: I am looking -- okay. If you look at
4 our blackline, the last sentence says, "In the absence of
5 any outstanding objections, such transfer (indiscernible)
6 the MDT insurance rights is authorized." It doesn't simply
7 say no one will object, it says it's authorized. The only
8 real difference is we want a predicate that says it's based
9 on the absence of objection by those parties who actually
10 filed an objection. And that goes to the point I was
11 raising earlier.

12 Look, I think it's a very different case. But one
13 of my insurance clients is in another case right now that
14 almost has as much publicity as this case. And so is Ms.
15 Grim on the other side. And there is an effort there to
16 assign to the trust non-debtor insurance policies. We think
17 that is not something that 1123 authorizes, including in the
18 Third Circuit. And I think this is all about precedent for
19 another case not before Your Honor that can be resolved
20 then. Our language would make it a hundred percent clear
21 that the transfer is authorized to the trust. That is going
22 to preclude anyone from arguing that the transfer vitiates
23 coverage. We simply want it as the predicate that there is
24 no dispute over the issue. And because there's no dispute
25 over the issue, the Court can go on and not resolve -- not

1 reach it.

2 As Ms. Grim notes, the only party that objected on
3 this ground, Chubb, has withdrawn that objection. Mr.
4 Copper of the Duane Morris firm is I believe on the line and
5 can confirm that if Your Honor has any doubts. But I spoke
6 to him specifically and got that representation and
7 therefore feel comfortable that I can confirm with Ms. Grim
8 set on the record.

9 I will also say that Debtors and the Committee
10 suggested the stay of the arbitration. So it wasn't other
11 insurers. But that's not my fight, Your Honor. That's an
12 issue for another day about the wisdom, or lack thereof, of
13 arbitration.

14 Let's look at the other findings. The second
15 issue on which there is some slight disagreement is over
16 Finding JJA, where we have stricken the second sentence and
17 added the words, "viewed collectively" in the first
18 sentence. This is a finding, quote, "The settlements
19 reached between the Debtors, we would add viewed
20 collectively" and the opioid-related claimants as embodied
21 in the plan are reasonable and were entered in good faith
22 based on arm's length negotiations. We then would strike
23 such negotiation, settlement, or resolution of liabilities,
24 shall not operate to excuse any insurer from its obligations
25 under any policy notwithstanding any terms of such insurance

1 policy, including any consent to settle or pay first
2 provision or provisions of non-bankruptcy law.

3 Let me explain what's going on here. But let me
4 start with a predicate. No one is asking on our side for a
5 finding (indiscernible) the finding Ms. Grim
6 (indiscernible). We are not asking that Your Honor find
7 that in fact the settlements do create any defenses
8 (indiscernible). That is a question for another day to be
9 decided again by Your Honor with full briefing and a full
10 record.

11 Let's talk now about the two things, the two
12 tweaks here. First, why viewed collectively? Well, this is
13 an issue specific, Your Honor, to my client. My client,
14 with respect to some of its policies, insured a particular
15 debtor, Rhodes, R-h-o-d-e-s. The disclosure statement notes
16 that Rhodes did not advertise or market any opioids at all.
17 It just manufactured generics. There is nothing in this
18 record, nothing in this record about it at all and whether
19 to the extent it's contributing any settlement is or is not
20 reasonable.

21 You may remember in the examination -- and if I
22 butcher her last name, Your Honor, I apologize. Ms.
23 Horewitz, the expert for the Committee. She acknowledged on
24 cross that her evaluation of comparing the liabilities to
25 the assets was done on an aggregate basis looking at all of

1 the debtors collectively, not individually.

2 So that brings me to the second point. Why strike
3 the second sentence? Your Honor, I don't know whether --
4 I'm not a coverage lawyer, as Your Honor knows. I am a
5 bankruptcy lawyer. I don't know whether there are or are
6 not defenses here relating to whether the Debtors violated
7 policy provisions. But I do know this. There is no record
8 before Your Honor. I know the following chronology. The
9 mediation occurred in 2020. And it was not until 2020 there
10 was an adversary and anyone had a clue -- I think you will
11 get this when the evidence comes in in the insurance
12 coverage action -- that the Debtors were even mediating and
13 -- there was no clue that the Debtors would seek any
14 coverage. What will the evidence be about whether the
15 Debtors in connection with their mediation reached out to
16 the carriers, spoke to the carriers, consulted with the
17 carriers, sought the carriers' consent to any settlement?
18 That -- and none of that evidence is before Your Honor
19 today. What are the implications (indiscernible) about what
20 that evidence is? That's going to turn on what state law
21 may apply. Is it the law of New York, the law of New
22 Jersey, the law of Oklahoma, the law of California? None of
23 that in that briefing is before Your Honor, in part because
24 the Debtors didn't seek these findings and didn't put them
25 in their proposed order until after briefing had closed by a

1 month on plan confirmation objections.

2 We are not asking Your Honor to make any
3 determination that somehow the Debtors have impaired
4 coverage that otherwise would exist. We simply think that
5 is an issue to be decided in this adversary proceeding upon
6 a full factual record and a full legal briefing, none of
7 which is before Your Honor today. And so not only would
8 (indiscernible) due process where we had no notice before
9 plan objections came in that these findings would be sought.

10 I will pause there. Section 9.1 and 5.6(I) that
11 Ms. Grim and Mr. Singer referenced are all about transfer.
12 The headings are about transfer and assignment. They have
13 nothing to do with reasonableness of settlement. And so,
14 no, there was no notice they would be seeking this finding
15 or conclusion.

16 So, A, it's inconsistent with due process for them
17 to seek it now. And, B, Your Honor doesn't have the
18 evidence and doesn't have the briefing. And I will say it
19 as clearly as I can. We are not saying, therefore, that
20 there has been a waiver by the Debtors that they can't later
21 argue that of course they can seek coverage, of course there
22 is no problem here. But this is not the occasion.

23 And I'll just make one last point on that this is
24 not the occasion. Your Honor has determined
25 (indiscernible). This is not a case where insurance

1 coverage is a predicate to plan confirmation and
2 feasibility. Your Honor has determined that whether or not
3 there is coverage, this plan is feasible.

4 There's only two other findings, and I'll just go
5 through them really quickly. One is a finding in Paragraph
6 E, as in Earl, H as in Harold, in our objection, Your Honor,
7 to the findings. I think we discussed this one in Paragraph
8 -- I actually skipped over it. I think it was in Paragraph
9 1, Your Honor. Yes, it is. We are perfectly with a finding
10 that all parties, including the carriers, had notice of the
11 filing of the Chapter 11 cases. We are not going to claim
12 that we were ostriches that put our heads in the sand. It
13 was all over the front page of every newspaper in the
14 country. But whether as a result we had an opportunity
15 participate or notice that the liabilities were being
16 mediated, negotiated, and resolved, that's the sentence we
17 propose to have stricken. It's really the same point. No,
18 until the adversary was filed, I don't think the evidence
19 will show any carrier who had any reason to think there was
20 going to be any effort to get coverage here. And again, Ms.
21 Grim may dispute that, but the evidence is not in front of
22 you, and the briefing is not in front of you, and it can be
23 resolved in the coverage (indiscernible).

24 The final provision, Your Honor, is I think in our
25 objection covered by Paragraph 5. I'm skipping over the one

1 in Paragraph 4, Your Honor, which deals with Plan
2 Confirmation Order JJB. The Debtors no longer seek that
3 finding, so there is no reason we need to discuss it. But
4 as to the last one, Paragraph NN, again, I don't know what
5 we're arguing about. We do not deny that Section 524(e) of
6 the Bankruptcy Code says what it says. We are not arguing
7 it's unconstitutional. The discharge of a debtor does not
8 discharge anyone else in their liability. No one is arguing
9 that. What effect, if any, any release may have, whether we
10 had notice of it or not, are things to be argued later.

11 Your Honor, I want to end, unless Your Honor has
12 questions, where I started. We didn't have due process
13 about these findings. We didn't have an opportunity to
14 address them. We didn't have an opportunity to retain
15 experts and the like. And more importantly, now there is no
16 record before Your Honor on any of them and there is no
17 reason why you need to reach them in a case where insurance
18 coverage is not core to confirmation in which the adversary
19 is before Your Honor, the arbitration will be stayed. And
20 we will proceed on a full record with full briefing. And
21 it's particularly inappropriate in a case where whatever
22 coverage there is or isn't will not be outcome determinative
23 in the feasibility of this bankruptcy, and the creditors
24 overwhelmingly voted for the plan without any such findings
25 and with the plan and with the neutrality language in 510

1 that the Debtors went out with and we are perfectly
2 comfortable with.

3 So with that, Your Honor, I would be happy to
4 address any issues Your Honor may have. I see you're
5 flipping pages. If I can be of help, happy to do so.

6 THE COURT: Well, I guess I wanted to focus on the
7 language in JJA and the third sentence. What's being
8 referred to here is settlements of the opioid-related
9 claims. It would seem to me that any insurer of an entity
10 that has opioid-relate liability, including the D&O insurer,
11 should be covered by this provision. And you're just
12 confining your remarks to insurers of companies that don't
13 have opioid-related liability, right?

14 MR. ANKER: Your Honor, you referred to the third
15 sentence of JJA, and I see two sentences.

16 THE COURT: Well, the third clause. Maybe it's
17 the third clause. You don't like the phrase, you want to
18 strike the phrase, "Such negotiation, settlement, or
19 resolution of liability shall not operate to excuse any
20 insurer from its obligations under any insurance policy."

21 MR. ANKER: Correct, Your Honor.

22 THE COURT: Including any consent to settle or pay
23 first provisions. And I want to set aside an insurer of a
24 company that does not have opioid-related claims. I don't
25 see why this sentence shouldn't have that language in it as

1 to every other insurer.

2 MR. ANKER: So by every other insurer I take it,
3 Your Honor, you mean an insurer of Purdue, insurer of those
4 Debtors who marketed --

5 THE COURT: Who have opioid-related claims.

6 MR. ANKER: Your Honor, there are insurance
7 policies -- and again, I'm going to get a little bit over my
8 skis here because I'm not a coverage lawyer. But insurance
9 policies as a basic predicate have as a term of them dealing
10 with the moral hazard. If you're going to ask me, the
11 insurer, to pay, then you've got to bring me in. You can't
12 settle without talking with me --

13 THE COURT: Right. But that law is different in
14 bankruptcy cases. So I'm just trying to figure out -- I
15 think your point was -- and you made it by focusing on
16 Rhodes -- that how can a settlement be reasonable of opioid-
17 related liability if it applies to a insured that doesn't
18 have opioid-related liability. And there is some logic to
19 that. But I don't understand the logic otherwise. I mean,
20 the parties have briefed the bankruptcy issue otherwise. So
21 I mean, I just --

22 MR. ANKER: Let me try to address the bankruptcy
23 issue. Your Honor, I think 99 percent of the cases about
24 whether bankruptcy law preempts -- my apologies Your Honor -
25 - bankruptcy law preempts state law with respect to

1 insurance policies and contract rights deals with the
2 transfer question. Really two questions. Can the transfer
3 occur on the initiation of the bankruptcy from the
4 prepetition debtor to the estate and (indiscernible)
5 transfer later to the trust. That's the issue in Federal
6 Mogul, the case Your Honor cited. And it in fact goes off
7 on the language in 1123(a)(5) that addresses whether -- that
8 specifically says a plan can provide for the transfer of
9 rights.

10 There is not a lot of law, there is very little
11 law on whether consent to settle provisions are or are not
12 overwritten by the Bankruptcy Code. I would ask Your Honor
13 to resolve that issue. I'm not asking you to rule my way,
14 but I would ask you to let that issue be briefed with a
15 record. I think you will find a record here that there was
16 no effort to consult with the insurers. That's not what
17 typically happens in bankruptcy. I can tell you or
18 represent to you that I am in other bankruptcies where the
19 debtors come to us and say here's what we're thinking of
20 doing. What do you think? What are your views? How do you
21 think about it? Would you consent to this? And that's not
22 going to be the record here I think, but Your Honor doesn't
23 know one way or the other. And I'd like to have an
24 opportunity to full brief that issue with an opportunity to
25 convince you that that's not what Federal Mogul stands for.

1 But neither the factual record nor the legal
2 briefing is there. And again, I'm not asking by striking
3 this language out. I want to be a hundred percent clear.
4 And if you think language needs to be added to be neutral to
5 make the point express, I don't have any objection to that.
6 I am not arguing that by striking this language, you're
7 implicitly ruling our way on the merits. I am simply, if I
8 can use the colloquial expression, suggesting we kick the
9 can down the road so that down the road there can be full
10 briefing, and to the extent it matters, a factual record.

11 But, Your Honor, I'll just end on this. Federal
12 Mogul and 99 percent of the cases, Combustion Engineering
13 and others, are about the transfer question, not about
14 whether a debtor can settle without -- not about provisions
15 and policies -- not about anti-assignment provisions, but
16 about -- they are about anti-assignment provisions, but
17 they're not about provisions that require consent or at
18 least consultation. And obviously lots of insurers' rights
19 are fully preserved. Let's look at one that's going to be -
20 - frankly may make all of this moot in the end of the day.

21 The policies overwhelmingly have products
22 exclusions. They exclude any liability of a carrier to the
23 extent that the insured, Purdue's liability arises out of
24 its manufacture of a product. No one is arguing, including
25 Ms. Grim or Mr. Singer, that somehow the Bankruptcy Code

1 overrides that. No one would argue that the Bankruptcy Code
2 overrides limits, aggregate limits in policy. No one would
3 --

4 THE COURT: All right. But I was really going to
5 a different question. I can look at and will look at
6 further the cases on consent or pay first, et cetera. I'm
7 really focusing just on the point you made with regard to
8 insureds that don't have opioid-related claimants.

9 I don't see how -- this is really a question for
10 both of you. I don't see how a settlement with opioid-
11 related claimants would affect one way or another an
12 insurer's obligation with respect to a consent or pay first
13 provision unless the insured -- I mean, I don't see how they
14 could be claiming on that insurance policy to pay the opioid
15 claims. By definition it seems to me that your Rhodes issue
16 wouldn't come up.

17 MR. ANKER: Your Honor, the Debtors are seeking
18 coverage from Rhodes. I think we're conflating multiple
19 issues. So let me try to help divide them up in a way that
20 may be helpful.

21 First, the Debtors are seeking coverage from
22 Rhodes. Our position is that they are not entitled to that
23 coverage, and the Court should not be making a
24 reasonableness finding that affects Rhodes. That goes to
25 reasonableness.

1 THE COURT: Well, are they looking for coverage
2 for opioid-related claims?

3 MR. ANKER: I believe they are, Your Honor. I
4 don't know that there are any opioid -- I mean, I don't know
5 that there are any -- we actually looked at proofs of claim
6 and could hardly find a proof of claim against Rhodes.

7 THE COURT: Okay.

8 MR. ANKER: But I do think in the adversary, they
9 are seeking coverage under the Rhodes policy with respect to
10 their settlements of opioid liability, including I think
11 settlements by other debtors. And so we simply want to be
12 able -- and this is one issue -- preserve as to Rhodes the
13 ability to argue that whatever reasonableness there may be
14 of the aggregate settlement, as to Rhodes there is no basis
15 for there to be a claim for coverage. Because if it is
16 contributing, it is doing so as a volunteer because it does
17 not face opioid liability having not marketed opioids.
18 That's one issue.

19 THE COURT: Again, this language just goes to
20 opioid-related claimants. So I don't see how --

21 MR. ANKER: Yes. Your Honor, I confused you, and
22 I apologize. When I was making the Rhodes point, it was the
23 first part of this clause, the words "Viewed collectively".
24 There's two different points going on here. One is why did
25 we want to add the words "Viewed collectively"? Because we

1 don't want a finding that's specific to Rhodes. The
2 strikeout on the second sentence --

3 THE COURT: Well, I don't think there is one. It
4 says Debtors, plural.

5 MR. ANKER: If we have a clear record on that,
6 Your Honor, and there's going to be no argument, we want it
7 viewed collectively to be clear. But the (indiscernible) is
8 going to be in front of Your Honor. Your Honor understands
9 that that is about the Debtors -- Debtors, S, plural -- I
10 can accept that.

11 The second sentence has nothing to do with the
12 Rhodes issue. And I apologize, Your Honor. I evidently
13 confused you. So --

14 THE COURT: Okay. So I don't think we need to
15 cover the second sentence further, because now I understand
16 where we are on this one.

17 MR. ANKER: Okay.

18 THE COURT: Okay.

19 MR. ANKER: Thank you, Your Honor. Are there are
20 any other questions Your Honor has?

21 THE COURT: Well, I guess I want to go back to the
22 first part, which is I have the proposed findings, I have
23 the plan. I don't -- you expressed a concern that under the
24 language of the plan, the Debtors could sneak something in
25 besides what's in the proposed findings. And say, for

1 example, the coverage limits or the coverage exception is
2 waived. I mean, I don't -- is that the concern? I mean, I
3 think I have what is before me that they're actually
4 seeking.

5 So, Your Honor, let me focus you on Section 510 of
6 the current plan as opposed to the one that went out for
7 solicitation.

8 THE COURT: Right.

9 MR. ANKER: It is very much like the one we have.
10 But then it has a proviso. After saying nothing in the
11 plan, the plan documents, or the confirmation order shall
12 alter, supplement, change, decrease, or modify the terms of
13 the Purdue insurance policies, including the MDT insurance
14 policies. That's all that was in there when it went out to
15 the creditors.

16 Now they've added the following, quadruple the
17 number of words. "Provided that notwithstanding anything in
18 the foregoing to the contrary, the enforceability and
19 applicability of the terms, including conditions,
20 limitations, and/or exclusions of the Purdue insurance
21 policies, including the MDT insurance policies. And thus,
22 the rights or obligations of any of the insurance companies,
23 the Debtors, or the trust, including the Master Distribution
24 Trust, arising out of or under any Purdue insurance policy,
25 including any MDT insurance policy, whether before or after

1 the effective date, are subject to the Bankruptcy Code and
2 applicable law, including any actions or obligations of
3 Debtors thereunder. The terms of the plan and the plan
4 documents, the confirmation order, including findings," --
5 and they (indiscernible) -- "and any other ruling or order
6 entered by the Bankruptcy Code.

7 So they have a proviso that says --

8 THE COURT: So -- so I understand that. So I
9 think you are worried about the plan documents and any other
10 orders or rulings, including in the future. Right?

11 MR. ANKER: And the past.

12 THE COURT: Okay.

13 MR. ANKER: Correct, Your Honor.

14 THE COURT: And I can understand that if, you
15 know, the insurers didn't have notice of those issues. And
16 maybe it should be dealt with that way. I'm not -- as far
17 as I'm concerned, what they're asking me to find and rule on
18 is what we're just been talking about for the last half hour
19 or so. It's the proposed findings of fact and conclusions
20 of law provisions that we've been discussing. And if they
21 actually -- and I don't believe this is the case -- sought
22 something from the Court that was not on notice to your
23 clients, it couldn't be encompassed by that language because
24 you wouldn't have notice of it. And if that's what needs to
25 be clarified, it should be. I mean, I just don't -- that

1 should be an easy fix.

2 MR. ANKER: Your Honor, I think it is an easy fix
3 if it's limited to the plan and the confirmation order. But
4 let me -- what I'm looking at. First, I am concerned about
5 the plan documents. I don't know what's going to be in
6 them, when we're going to have an opportunity to look at
7 them. But going back in time, it says under any order
8 entered by the bankruptcy court without any temporary
9 limitation, without any language about notice on us. That
10 would include any order you entered at the outset of the
11 case before the adversary --

12 THE COURT: I understand. But that has to be
13 qualified by notice, obviously. I mean, Mr. Singer's point
14 is insurers can't sit back and say everything that happens
15 in a bankruptcy case on notice to us doesn't matter. You
16 know, the normal rules of judicial estoppel, collateral
17 estoppel, and law of the case just don't matter for
18 insurers. That's just -- that's not right. But those
19 principles all require notice. So that could be --

20 MR. ANKER: And, Your Honor, I think that can be
21 fixed with a notice provision, adequate notice. I will say,
22 Your Honor, there's a lot of law on whether findings in a
23 contested matter are in fact res judicata for purposes of a
24 future adversary. That's an issue we can brief with you
25 later.

1 But I will say, Your Honor, let me go back to this
2 provision for a moment. Why can't we have the language that
3 was there when the plan went out that the creditors wrote it
4 on? This is a last second change.

5 THE COURT: But it's not a last second change.
6 You all have been able to blackline the proposed order, for
7 example. I mean, you -- as you said, you and Ms. Grim and
8 Mr. Singer have been living these issues in multiple cases.
9 You know the caselaw. You know the issues. This is not
10 really a surprise here. And if you just have that language,
11 then you have the potential for the coverage exclusions.
12 And I don't think that's right given the record as far as
13 the transfer.

14 And I think, although I will double check the
15 caselaw with regard to the pay first and consent points --

16 MR. ANKER: Your Honor, this is not a pay -- I
17 want to make sure we're drawing issues --

18 THE COURT: I understand. But that's why I don't
19 think it really matters. And, frankly, I don't think the
20 consent really matters, either. I mean, to me, if the
21 claims are being settled, they will only be settled in this
22 context. They will be settled for a lot worse in some other
23 context. So what -- the deletion of this language would
24 mean that the insurers could go -- could raise this whole
25 issue, that we've had six days of trial and two days of oral

1 argument on as to whether the settlement is proper or not
2 all over again. That just doesn't make sense.

3 MR. ANKER: Your Honor --

4 THE COURT: And I think the underlying principle
5 is right, that in bankruptcy it's a collective proceeding.
6 The insurers' rights are to object on the context of the
7 collective proceeding. And if they really believed that
8 these settlements were on their backs properly or
9 improperly, they would have objected. They would have
10 raised their voice. And they've just not.

11 MR. ANKER: So, Your Honor --

12 THE COURT: I mean, their issues are much more
13 narrow, primarily. They're basically saying we didn't cover
14 this sort of stuff. And the settlement doesn't say they
15 did. This is not a -- this is very different from a case
16 where they're asking for a finding that there's X degree of
17 insurance coverage that actually applies to these claims.
18 They're not seeking that relief. They just want to prevent
19 settlements that if I approve them, I will find are
20 reasonable on notice to the insurers, the insurers coming
21 back and saying no, we have to relitigate that whole thing.
22 And to me that just is not right.

23 MR. ANKER: I understand Your Honor's position.
24 Do I understand correctly that either we'll have the words
25 "viewed collectively" added or at as clear to Your Honor

1 that this is not specific to -- is not a finding with
2 respect to Rhodes --

3 THE COURT: It's to all the debtors. It says
4 debtors, plural.

5 MR. ANKER: That's correct.

6 THE COURT: We're not allocating, you know, X to
7 one debtor and Y to another. But at the same time, I don't
8 -- I think that the language that insurers have proposed be
9 stricken really should stay, because it's -- I think under
10 these circumstances, isn't a settlement that is being
11 proposed to be funded primarily by the insurers. In fact,
12 the evidence suggests -- Mr. Huebner's presentation today
13 was exclusive of insurance. So that was on top. And so I
14 think all things considered, I understand why the insurers
15 haven't objected, because to them it's -- it actually
16 ensures that, frankly, as much money as possible goes out to
17 reduce their potential liability.

18 MR. ANKER: Your Honor, so I take it you believe
19 the language should remain in Paragraph JJA. Does Your
20 Honor have any questions about any of the other provisions
21 that are --

22 THE COURT: Well, I don't really agree with them.
23 I just think, again, I think there should be a reference to
24 the withdrawal of the objections. That's fine. I think
25 that's an important aspect of the record. And that may well

1 help you in your concern about precedent, although I don't
2 think what we're dealing with here involves insurance of
3 non-debtors being used to pay debtor obligations. But I
4 think the objection should be noted and the withdrawal of
5 objections and the lack of objections by any others.

6 MR. ANKER: Thank you, Your Honor.

7 THE COURT: Okay. Okay. And as far as the
8 language in the plan itself, I mean, I think I've been
9 clear. If the Debtors or the MDT try to alter the insurers'
10 rights other than as set forth in the findings of fact or in
11 the confirmation order itself or in the plan documents that
12 you have, without due notice, you just can't -- that's not
13 operative. That can't be operative.

14 MR. ANKER: Thank you, Your Honor.

15 THE COURT: I don't know how you word that. I
16 imagine you'll probably come up with some language to cover
17 that. But it's basically a fundamental principle. So even
18 if you can't in the next day or so come up with that
19 language, I think the record is clear that, you know, you
20 can't have super-secret probation.

21 MR. ANKER: Thank you, Your Honor.

22 THE COURT: Okay. Okay. Thank all three of you.
23 I do, that is.

24 MS. GRIM: Your Honor, may I have the opportunity
25 to address a few of Mr. Anker's points?

1 THE COURT: Sure. I'm sorry. Go ahead.

2 MS. GRIM: On Mr. Anker's point as to why are we
3 here, I just want to reiterate I think we've made it pretty
4 clear that we're here because the insurers have made it
5 clear that they seek to negate coverage solely based on the
6 plan. And even if Mr. Anker agrees not to object to any
7 aspect of the plan, that we need these findings to preserve
8 the value of the MDT insurance rights.

9 Mr. Anker is correct and we agree, the recovery of
10 proceeds is not a predicate to confirmation, but transfer of
11 the insurance rights is a predicate. And the MDT's ability
12 to access those rights without having the transfer itself or
13 any other aspects of the plan vitiates coverage is also a
14 predicate. And 1123(a)(5) preempts any policy provisions
15 that may impede the Debtor's ability to implement this plan.

16 I also need to address Mr. Anker's suggestion that
17 our firm, Gilbert, is seeking confirmation findings solely
18 for precedent in other cases. Because, frankly --

19 THE COURT: Well, it wouldn't work anyways. So
20 that's fine.

21 But I just want to -- again, can I go back to
22 something? I am not aware of any other provision of the
23 plan that -- other than what we've been talking about today,
24 that affects the insurers' rights. Is there any? I'm not
25 aware of any.

1 MS. GRIM: No, Your Honor. And I know certain
2 insurers raised some concerns regarding -- I believe it was
3 the definition of the MDT insurance rights or the schedule
4 that listed certain policies that fall within that
5 definition. We want to make clear the plan is not
6 presupposing that those policies provide coverage for the
7 opioid liabilities. You know, if any of these provisions
8 give Mr. Anker heartburn, I think he's had a number of weeks
9 now to raise them. We have addressed other concerns by
10 other objecting insurers to clarify language, that we're not
11 trying to do that.

12 So I think what you see is what you get here. We
13 are seeking the findings that we are seeking.

14 THE COURT: All right.

15 MS. GRIM: And that's it.

16 THE COURT: Okay. All right. Thank you.

17 MS. GRIM: I do think it's important, if I could
18 just have two minutes to address his due process arguments.
19 And I don't want to drag this out, but I do think it's
20 important to correct the record on this. We've had numerous
21 conversations about the scope and intent of this provision,
22 starting back on May 9th. The Ad Hoc Committee and the
23 Debtors made clear from the get-go even with the old
24 language that the intent was to preserve the same rights and
25 obligations the insurers and debtors had under the policies

1 prepetition, but not to permit the insurers to limit or
2 escape their coverage obligations based on any aspects of
3 the plan for the Chapter 11 process. The insurers expressed
4 a contrary view, and that's why revised the provision to
5 begin with. So I think it's a little bit of a stretch to
6 say that they were taken off guard. But even if they were -
7 - and I'm not going to beat a dead horse on this because I
8 think Your Honor made the point effectively -- what exactly
9 have the insurers been deprived of? They've had the
10 opportunity to object to the plan, to the confirmation
11 order. We are here right now. They had the opportunity
12 cross-examine witnesses during trial last week. And so any
13 due process confers here being unfounded. And in fact, I
14 believe we provided these confirmation order findings back
15 on August 11th, which might have been before the Court even
16 had them, although Debtor counsel can correct me on that.
17 So, again, I just need to correct the record on that point.

18 Again, if Your Honor has any specific questions on
19 the particular findings that were not already addressed, I'm
20 happy to address those. But otherwise, I'll --

21 THE COURT: I don't think I do. I think you've
22 gone through them.

23 MR. ANKER: Your Honor, this is Mr. Anker. I'm
24 not going to reargue anything. I will say I assume that --
25 I note Your Honor is talking about working on language in

1 the next two days. I think we heard you loud and clear
2 about the notice points and other points. I assume and will
3 request that the Debtors furnish us with a copy of any
4 revised confirmation order and plan documents so we can see
5 them. And not formally settling the order, but so that we
6 can see them and give our comments.

7 THE COURT: Absolutely. That's fine.

8 MR. ANKER: Thank you, Your Honor.

9 THE COURT: But again, as far as these proposed
10 findings are concerned, except for the references to the
11 withdrawal of the objection and there being no other
12 objections and just the record being clear, the Debtors
13 means Debtors, plural. I am actually comfortable with the
14 language as proposed by the Debtors here. And that includes
15 the release point, which is really tied into the settlement
16 point which we discussed for a while.

17 MR. ANKER: Thank you, Your Honor.

18 THE COURT: Okay. All right.

19 The next thing for oral argument is time that I
20 asked be reserved for the people who filed pro se objections
21 to the plan, i.e. people who were not represented by lawyers
22 who filed a timely objection to the plan. And I think two
23 of those people have, as I understand from my clerks, either
24 signed up for the Zoom for Government feed to address their
25 objection or at least been given the information to do that

1 because of an earlier request to speak.

2 So the Debtors at this point don't have anyone to
3 speak first. I think they reserve their rights to respond.
4 But I am happy to hear from the individuals who did want to
5 speak who filed a timely objection.

6 And I have down on my list Ms. McGaha. I hope I
7 am pronouncing that right. I see you there. And you can go
8 ahead, ma'am. I want to assure you and the other pro se
9 objectors, even if they've not signed up to speak, that I
10 have reviewed each of the plan objections. And actually,
11 there were some statements by claimant that were not
12 expressly couched as an objection, but they were riled
13 around the time before the -- around and before the deadline
14 for objecting to the plan. And I think actually Ms.
15 McGaha's filing was one of those. But I was treating it as
16 a plan objection. So I am happy to hear from you, ma'am.

17 MS. MCGAHA: Thank you, Your Honor. Before I --
18 my name is Carrie McGaha.

19 THE COURT: McGaha, okay.

20 MS. MCGAHA: McGaha.

21 THE COURT: Thank you. Okay.

22 MS. MCGAHA: You are not alone in mis pronouncing.
23 Before I begin, I would like to ask a couple questions, if I
24 may.

25 THE COURT: Okay.

1 MS. MCGAHA: I was confused on the voting. I've
2 heard you all talk about it. And I was kind of under the --
3 it sounded to me -- now, I'm not a lawyer. I don't know if
4 this is all like -- plus, I have a damaged mind from all the
5 opiates I took, and I process information kind of like sand
6 through a colander. And so -- but when I was reading the
7 voting and the ballot, it seemed like if I voted no, I was
8 kind of relinquishing some of my claim amount. Like I was
9 almost ready to vote yes just to --

10 THE COURT: No.

11 MS. MCGAHA: And so I don't know if anyone else
12 had that understanding, but --

13 THE COURT: No one has raised that point. And I
14 think the ballot materials were clear. The vote was just a
15 vote on the plan. It had nothing to do with whether your
16 claim would be allowed or not.

17 MS. MCGAHA: Okay, thank you. Also, my broad
18 understanding of this plan is that the new company will be
19 able to -- is going to continue the sale of OxyContin and
20 partial opiates, opiate antagonists, and other drugs in
21 order to fund abatement. Is that an improper understanding?

22 THE COURT: Well, it depends what you mean by the
23 word continue. It will be under a very strict set of
24 operating guidelines in the form of an injunction. It will
25 have, as it has had during the whole course of this case, a

1 monitor. The first monitor I think is now the Health and
2 Human Services Secretary. People of statute. It will have
3 governance by representatives of, you know, the Claimants.

4 So your answer is -- again, depends on how you
5 define the word continuing. I think it's quite clear -- and
6 the Debtors already have represented and the monitors have I
7 think made this clear -- that whatever marketing practices
8 that Purdue had that have been alleged to have flooded the
9 country with opioids, of just its opioids, will not -- has
10 not and will not be occurring, that the salesforce doesn't
11 exist. There is no salesforce.

12 So if you've been listening to the trial over the
13 last week or so, there is a balance for a regulated company
14 like this that sells products that are inherently dangerous
15 where nevertheless the regulators contend that they agree
16 that they are not prohibited and can be used for proper
17 purposes.

18 So it's not going to stop selling opioids, but it
19 will not be selling them in a way that existed at least
20 through the period that it was marketing them with the
21 salesforce and trying to drive up prescriptions, et cetera.

22 MS. MCGAHA: Okay. Thank you. I appreciate the
23 previous speakers and yourself for giving me an intro into
24 what I feel like I need to say. I don't have a script
25 written here. I'm just going to try to pray that the whole

1 experience speaks for me and anoints my words. Because this
2 is all very confusing.

3 But who am I? I am someone who has had --
4 apparently I am the only one on this list that's willing to
5 speak to you today who has been through this. But I feel
6 like I have relevant life experience with this. Because I
7 did work around, as I have indicated in my submissions,
8 drugs, you know, a lifetime ago. And I've never been in
9 trouble with the law. I never did anything, you know,
10 illegal and all that kind of stuff while I was working. But
11 way back in the eighties, you know, somehow people didn't
12 need long-acting opiates to get their relief from pain. And
13 when the Oxycontin was introduced by Purdue onto the market
14 and then pushed out by the doctors -- who I also hold highly
15 responsible, because one can't function without the other.
16 That having taken these drugs for over 15 years and
17 survived, those long-acting opiates act completely different
18 than short-acting opiates.

19 And I know that there's a lot of testimony
20 concerning the diversion, that that's why they formulated
21 OxyContin the way they did, to prevent diversion, and it's
22 not 100 percent -- or however they adulterate it or
23 whatever. I don't know.

24 I don't have a lot of experience with the illegal,
25 incarcerated, all that kind of stuff, but having taken those

1 drugs, when you're taking those long-acting drugs for
2 chronic pain -- and I'm not talking about acute pain -- I
3 think that these drugs are miracles to help people with
4 acute pain. But these long-acting drugs, they take away
5 your individual ability to kind of manage your own pain.

6 You know, used to it was as-needed for pain. Once
7 you get over that, you know, three to -- three days to 10
8 days of post-op or whatever the injury, or whatever it is,
9 and you kind of start to heal. You know, you should be
10 decreasing the usage, and your pain should lessen.

11 And what they did to me was they just kind of --
12 and then they -- the doctors still give you the breakthrough
13 pain pills, and so either way you're getting a long acting
14 drug that's supposed to prevent you from abusing it, but
15 then they still give you the short-acting drugs to help with
16 the breakthrough pain because every time you take them and
17 if you're on a constant level, your tolerance is constantly
18 building up, and so you're just always building up this
19 tolerance to the drug, and your tolerance to the pain goes
20 way, way down.

21 And so it's a vicious snowball of psychic hell
22 that happens on these drugs. And as a patient who still
23 suffers from chronic pain, but the Lord really helped me in
24 dealing with it, the -- see, this is the sand going through
25 the colander. I just lost my thought, but I do have a few

1 notes here.

2 It's the risk of reinjury. That's what I was
3 going to say. When you're taking those drugs just constant
4 long term, especially for chronic pain that you really need
5 to address in non-pharmaceutical ways if possible, which I
6 think the introduction of these drugs pushed like they were
7 onto the market prevented a lot of development of the
8 alternatives that, you know, could've been really developed
9 over the past 20 years rather than just relying on all these
10 opiates and then, you know, we're in the situation that
11 we're in.

12 But when you take opiates for pain and injury,
13 like I have a really bad back, and so it does take away that
14 (indiscernible) of the pain, and so you think you can do
15 stuff that you really shouldn't do it. You know, you are
16 feeling less pain. It's really not that -- I never felt no
17 pain unless I was unconscious, but your pain is -- whatever
18 happens to you, you do -- you do more than you really should
19 do. You don't allow yourself to heal so that you -- and you
20 know, eventually heal fully, and I'm going on and on.

21 THE COURT: No, no. I think I understand your
22 point.

23 MS. MCGAHA: Okay. I'm sorry. I'm going to try
24 to keep this short because I don't want to cost anyone --

25 THE COURT: That's fine.

1 MS. MCGAHA: -- any more money than necessary.
2 You guys get paid beaucoups of money, so I don't want to
3 take away from --

4 THE COURT: Well, I don't get paid by the hour, so
5 you can go ahead.

6 MS. MCGAHA: Okay. I think it delays healing,
7 anyway, the OxyContin especially.

8 I feel like the way that that was approved by the
9 FDA and all of the experts that have -- not all but a lot of
10 experts that approved these -- that regulate and approve
11 these decisions, I -- I mean, I just really kind of -- I
12 don't understand it because OxyContin -- no one should
13 really need constant opiate of OxyContin if they're still
14 going to get the short-acting drugs. I mean, it just
15 doesn't make sense to me.

16 But I think I tried to make that point in my
17 submission also, that there's a symbiotic relationship
18 between the healthcare system and the pharmaceutical
19 industry. And it's like hand in glove, and the -- all these
20 people out here would not have been prescribed these drugs
21 if the doctors hadn't have been, you know, benefiting
22 somehow.

23 And that, I feel like, is kind of a missing link
24 or whatever in this plan is that it -- I know this is a
25 pharmaceutical bankruptcy and all this kind of stuff, and I

1 just hope that whoever, you know, the state leaders or
2 whoever gets to introduce the solutions or decide how the
3 money's spent in each state remembers that people out here
4 like myself in, you know, Podunk USA where you have to drive
5 an hour just to get, you know, anywhere, and if you want to
6 go to a good -- a really good doctor, you're going to drive
7 three hours.

8 And so a lot of the solutions that I've outlined
9 in my submissions are alternatives that I personally have
10 been trying to use some of them on my own, but if they'd
11 have been more available, you know, years ago, if this had
12 not been offered as a solution, I would not have gone out on
13 the street and looked for illegal drugs to ease my pain.

14 I would've had to -- I mean, I was the type of
15 person -- I would've done what I -- you know, what the
16 doctor recommended, and I relied on those doctors to put my
17 best interests at heart and to, you know, follow their
18 Hippocratic Oath and not just get the country addicted to
19 opiates like that's the only solution.

20 I mean, you've got these task forces who know all
21 of this. All these doctors, they know this. But down here
22 in these -- you know, out here in no man's land, it's a
23 different world, and the way that they're doing the funding
24 of the abatement programs, you know, and a lot of this, it
25 is based on population and the MMEs.

1 And I fear that there's just going to be these
2 huge bureaucracies of these agencies who are going to -- you
3 know, it's all going to funnel through. And by the time it
4 gets down on the ground to the people that really need it,
5 there's not going to be very much left, and I know there's
6 all sorts of formulas that they go by and everything, and
7 that's kind of necessary. But from where I'm standing,
8 that's just what I see, and that's what happens in rural
9 areas.

10 The drug-induced decline that we experienced over
11 the years, you know, people leave. And they go to nice
12 areas, the big city where, you know, those places, their
13 population grows, and they get more money, and people leave
14 here because, you know, less money. And so it's just kind
15 of -- the problem gets bigger, and it's all because of the
16 drugs. And --

17 THE COURT: Okay.

18 MS. MCGAHA: I just wanted to say also that on the
19 unit dose thing, I tried to describe how that would've
20 helped me, and I feel like if they're going to continue to
21 sell especially OxyContin -- but I feel like all narcotics
22 should be in like a card.

23 I don't know if you're familiar with Accutane, but
24 it's a drug, and it's sold on a card so the you can see,
25 okay, I took that. You don't want to overdo it. You know,

1 or birth control pills. You can see when you took it and,
2 you know, how many you took.

3 And that was one of my problems because for a long
4 time, I was on fentanyl patches. I had 100 microgram
5 fentanyl patch every 48 hours, and I was taking 120 Dilaudid
6 a month along with it, and it went on for years. And it was
7 either fentanyl or OxyContin along with the Dilaudid or
8 other drugs.

9 And so the doctors that prescribe these and the
10 doctors that are in the Sackler family and executives with
11 the pharmaceutical company, you know, they're uniquely
12 trained and credentialed to know the pharmacology and the
13 human anatomy and how all this kind of interacts. And you
14 know, they should've known the history of opium in this
15 country and, you know, for hundreds of years, the addiction
16 that can happen from it.

17 But the side effects, you know, you get memory
18 loss and confusion, and then you combine that with Valium or
19 whatever, and it's just even worse. And so I can just
20 remember, I mean, you're looking down the barrel of a bottle
21 of pills, and you can't tell how many are in there, and
22 you're in pain. You're suffering and you're vulnerable, and
23 you know, we're depending on the doctor to not give us
24 something that really is going to harm us.

25 But when you're in that situation, and I was the

1 only one that could manage my drugs. I was like the
2 healthcare drug expert in my family. And you know, I didn't
3 do a very good job. There was never a time that I ever
4 diverted my drugs or mis -- abused my drugs or did anything
5 like that, but there were times that I made my mistakes, and
6 one of those times caused me to almost die, and my children
7 found me. And you know, they were traumatized by that, and
8 you know, they probably should've filed a claim for all of
9 the trauma that they went through, but that's beside the
10 point.

11 But the diversion that the Sacklers talk about
12 when they testified, like that's the biggest problem, which
13 I get that that is a big problem in this country. In fact,
14 before I even filed this claim, I had written letters to my
15 governor, and the attorney general, and my local sheriff
16 kind of similar to the things that I've written in my
17 submissions because I felt like the -- that's what I felt
18 like God was trying to tell me what to do.

19 But they kept talking about diversion. In this
20 case, you're only going to get paid money as a personal
21 injury person if you have proof, you know, medical records
22 and pharmacy records that you actually took these drugs,
23 from my understanding of it.

24 And so -- but it seems like all of these abatement
25 programs and a lot of the talk that the Sacklers had was all

1 about diversion, and they kept mentioning, you know, heroin
2 was on the rise anyway, and kind of like it was inevitable
3 that opiates were going to be a crisis, and if they knew
4 heroin was already on the rise, why they thought introducing
5 OxyContin and pushing all these drugs out onto the market
6 would be a great solution, I don't know.

7 I think that's negligence, and I think not putting
8 those drugs, knowing the side effects of those drugs on the
9 patients taking them and expecting those people to manage
10 the consumption of those drugs -- when you go in the
11 hospital, you know, the nurses chart every pill. They count
12 every pill. They keep up with every pill like it's some
13 kind of piece of gold or something. But if you're a
14 patient, you're supposed to manage all this on your own
15 while you're suffering, and suffering the side effects? It
16 just seems like negligence to me.

17 And the quantities were just outrageous. And I've
18 had multiple surgeries over my lifetime, and I do know what
19 -- the quantities and how drugs were prescribed in the '80s,
20 and somehow people managed to recover from surgery, and
21 recovery from injury, and recover from all sorts of things
22 without being -- having it necessary to be put on long-
23 acting opiates. And that's my biggest concern --

24 THE COURT: Right.

25 MS. MCGAHA: -- is (indiscernible).

1 THE COURT: I hate to do this, Ms. McGaha, but I
2 think -- I read your objection. I think we're now circling
3 back to things we've already discussed, and --

4 MS. MCGAHA: Okay.

5 THE COURT: -- you discussed them quite clearly,
6 so I'm going to --

7 MS. MCGAHA: Okay.

8 THE COURT: -- thank you.

9 I want to make two observations. First, the
10 abatement programs under this plan are not locked in stone,
11 except for the fact that the money has to be used for
12 abatement, so my hope is -- and I believe this is the hope
13 of the states, and local governments, and hospitals that had
14 a hand in putting together these abatement and treatment
15 programs is that people learn as they go along, and part of
16 the learning is going to come from the reports that have to
17 be filed in this case as to effectiveness of treatment and
18 the effectiveness of the abatement programs, how to do this
19 best.

20 And I think -- it is clear to me at least that
21 this -- that that task is a complicated one, but it includes
22 the ability of people like yourself, people who run
23 community groups, who run associations of both people who
24 themselves have suffered from opioid use disorder and their
25 relatives to have input, to speak to their councilmen, their

1 mayor, their governor, and the local health authorities, to
2 give them their input. And I think that's important,
3 obviously.

4 So this is not -- you know, I think this money is
5 to come in over a substantial amount of time, and it is not
6 going to -- if I confirm the plan -- always going to be a
7 2021 abatement program. We'll learn from it, and so your
8 observations are important there.

9 MS. MCGAHA: Thank you, Your Honor. I appreciate
10 the opportunity to voice my concerns and speak to the Court,
11 and I really appreciate all your time and effort.

12 THE COURT: Okay. Thank you.

13 All right. I don't know if -- I just have on my
14 list Ms. McGaha, but I don't know if anyone else who filed a
15 timely objection as a pro se wants to speak. Otherwise, I
16 guess I'll hear from the Debtor's counsel.

17 Okay. Oh, I think there is one other person. Ms.
18 Eck?

19 MS. ECKE: Yes. Judge Drain, please, please
20 forgive the unmuting, the untimely unmuting of my computer.

21 THE COURT: Oh, that was -- that's --

22 MS. ECKE: And the --

23 THE COURT: That's fine, ma'am. That was for like
24 one tenth of a second, and I'm sure Mr. Singer has
25 experienced much worse over the pandemic on various Zoom

1 calls that he was on, including probably dogs and children
2 and all sorts of things, so don't worry about that.

3 MS. ECKE: Thank you. Anyway, I'm going to --

4 THE COURT: And Ms. Eck, I don't know if you want
5 -- if you want to be on the screen. You don't have to be,
6 but I'm not able to see you. If you don't want to be on the
7 screen, that's fine.

8 MS. ECKE: It's okay. I just don't know how to do
9 it.

10 THE COURT: Oh, okay.

11 MS. ECKE: Any way.

12 THE COURT: The person who's running this in the
13 courtroom -- my tech person says your camera is actually
14 covered by something.

15 MS. ECKE: Oh. Oh, oh, oh. I got it. That's
16 still not -- that's the lights above.

17 THE COURT: Yeah. It has to be pointed --

18 MS. ECKE: It's not helping.

19 THE COURT: Anyway, it's all right.

20 MS. ECKE: Okay. Anyway, my objection to the
21 restructuring of Purdue Pharma LP et al, case number 19-
22 23649.

23 Dear Judge Drain, I began researching OxyContin,
24 and its generative derivatives as my son prescribe -- my
25 son's doctor prescribed this to him at an early age. After

1 my dearest firstborn died December 17th, 2015, nine days
2 after my birthday on December 8th, and nine days bore my
3 poor, deaf, Vietnam veteran's ex-husband's birthday on
4 December 26th in 2015, I was immediately awoken to learn
5 about this overprescribed drug.

6 At first when I started to -- trying to write a
7 motion for claim payment in early November of 2020, I
8 spilled out my heart to all the following individuals in
9 this instance. This was an extreme, extreme tragedy, as
10 many of the attorneys, including Marshall Huebner of Davis
11 Polk & Wardwell; Layn Phillips of Corona Del Mar,
12 California; Kenneth Feinberg of Washington DC, and many
13 others, including Ryan Hampton, Blue Cross Blue Shield
14 Association, CVS Caremark Part D Services LLC; and Health
15 LLC; Cheryl Juaire, T -- L-S --LTS Lohmann Therapy Systems
16 Corporation, Pension Benefit Guaranty Corporation, Walter
17 Lee Salmons, Kara Trainor, West Boca Medical Center; the
18 official committee of unsecured creditors, care of Akin Gump
19 Strauss Hauer & Feld LLP; Bank of America Tower, One Bryant
20 Park, New York, New York 10036.

21 Attention Attorney Edan Lisovicz and Attorney Arik
22 Preis who are in my letter dated December 13th, 2020. My
23 letter to Judge Drain July 30th, 2020 you can read in full
24 online. Please also view my motion for claim payment dated
25 December 15th, 2020.

1 Previously, I had begged the Attorney General of
2 Connecticut, George Jepsen, presiding attorney general for
3 Connecticut from 2011 to 2019 for help for the mothers of
4 Connecticut who had lost their children due to this crisis.
5 I had also contacted the Connecticut Department of Health
6 previously and received no help from anyone -- or from
7 anyone personally or for my group of bereaved mothers.

8 Gloria (indiscernible), head of Consumer Affairs
9 for Attorney George Jepsen of Connecticut who was in office
10 from 2011 to 2019 and Sandra Arenas, the new head of
11 Consumer Affairs for Attorney George -- Attorney General
12 William Tong of Connecticut from January 1st, 2019 had
13 already told me that the state only sues for the state, not
14 for the individuals.

15 At this point in my life, I feel in my opinion
16 that I have been used and abused by the state of
17 Connecticut. I was born in the great country of America and
18 always thought that I would receive help if I asked for it.
19 I'm really hurt by everyone's indifference to my personal
20 tragedy and the personal tragedies of many others.

21 Attorney James I. McClammy of Davis, Polk &
22 Wardwell, the attorneys who are defending Purdue Pharma LP's
23 actions first contacted me via e-mail, later by Jacquelyn
24 Knudson of Davis Polk & Wardwell on December 3rd, 2020 via
25 telephone. Then I called Attorney Knudson on December 7th,

1 2020. Attorney James I. McClammy wrote a letter dated
2 December 8th, 2020 and mail it to me December 9th, 2020
3 stating that I had talked to Attorney Knudson on December
4 7th, 2020.

5 My previous letter to you, Judge Drain, was dated
6 December 15th, 2020. That was my motion for claim payment.
7 On February 24th, 2019, there was a segment on television of
8 60 Minutes entitled "Did the FDA Ignite the Opioid Epidemic?
9 A drug manufacturer Denounces his own industry and explains
10 to 60 minutes how a label change by the FDA expanded the use
11 of opioids" in which correspondent Bill Whitaker talks to Ed
12 Thompson, a Pennsylvania drug manufactures -- manufacturer
13 who tells about his lawsuit of the FDA at the beginning of
14 the OxyContin crisis.

15 60 Minutes had to petition the courts of West
16 Virginia to get the information to issue this segment of the
17 television program since according to 60 Minutes, the drug
18 manufacturers and the FDA were holding secret meetings about
19 the labeling of the drug.

20 Ed Thompson states that OxyContin was on the
21 market since 1990, and the FDA new how potent the drug was.
22 Ed Thompson explains how a high-dose long-duration opioid
23 kills people when there was no scientific evidence to
24 condone long-term use of opioids. Ed Thompson had stopped
25 the high-potency, high-dose drugs that he manufactured in

1 1962.

2 Therefore, in my opinion, I don't agree with the
3 declaration of Jonathan Greville White on page 4, Article 9,
4 which states "Beacon Trust, one of the general trusts is the
5 ultimate owner of the 50 percent limited partner Purdue
6 Pharma LP, Purdue, which holds for the benefit of Side A an
7 entity for the benefit of Raymond Sackler or Side B is the
8 ultimate owner of the blankie of the Purdue equity.

9 "Beacon Trust was settled in 1993 by Mortimer D.
10 Sackler, several years before OxyContin was launched. I am
11 the director of Heathridge Trust Company Limited, which is a
12 trustee of the Beacon Trust Company Limited, which is a
13 trustee of the Beacon Trust.

14 "Since the death of Mortimer D. Sackler in 2019,
15 the Beacon Trust has been an irrevocable trust of the
16 benefit of Theresa Sackler, Dr. Mortimer D. Sackler's issue,
17 and various charitable beneficiaries. The Beacon Trust
18 instrument provides that its trustee holds the Beacon Trust
19 funds in its discretion with prior written consent of the
20 special trustees to pay income and/or capital to or for the
21 benefit of one or more Dr. Mortimer D. Sackler's spouse,
22 defendants, and/or charitable foundations."

23 Later, Jonathan Greville White states, "Each of
24 these general trusts is an irrevocable discretionary trust.
25 Their beneficiaries are typically to the Sackler, and the

1 issue of Dr. Mortimer D. Sackler. One general trust confers
2 upon Theresa Sackler a life interest over the income that is
3 generated each year."

4 According to LexisNexis and the Bloomberg Law on
5 December 17th, 2019 at 6:09 p.m., Samantha Stokes wrote,
6 "Purdue Pharma has paid several big law firms for the legal
7 work on behalf of the Sackler family members, including
8 Debevoise, McDermott and Norton Rose, according to new
9 documents" and "Purdue Pharma, the embattled pharmaceutical
10 company at the center of the opioid crisis has paid more
11 than 17.5 million in legal fees on behalf of the Sackler
12 family to more than a dozen law firms, according to the new
13 documents filed in the company's bankruptcy. Debevoise &
14 Plimpton was paid the majority of the legal spend, more than
15 11.4 million for its legal work for the Sacklers from the
16 first half of 2018 through 2018 through early 2019 according
17 to an audit filed Monday in the U.S. Bankruptcy Court in the
18 Southern District of New York where the company is
19 undergoing Chapter 11 restructuring."

20 If the Sackler family used the money that they
21 spent on attorneys instead of for themselves -- instead of
22 themselves, all parties would be happier.

23 As far as my understanding from Arik Preis,
24 partner at Akin Gump who called me at 6:30 p.m. on July
25 30th, 2021 after I sent my original July 30th letter off and

1 will object if I give you actual numbers for our
2 conversation dated Friday, July 30th, 2021, there are four
3 main sides of this restructuring equation, one consisting of
4 the official committee of unsecured creditors and all the
5 others in my previous letter dated December 13th, 2020;
6 another side consisting of a few brave pro se advocates and
7 me who are supposedly supposed to get virtually nothing; an
8 additional side of states with attorney generals,
9 municipalities, and an abundance of lawyers handling Chapter
10 11 in case number 19-234649, getting the majority of at
11 least three quarters of the funds, which may or may not help
12 injured victims directly from an 18-year trust. And
13 finally, the fourth side consisting of the Sackler family
14 who is trying to use their ill-gotten fortune off the backs
15 of heartbroken people who lost their loved ones.

16 On July 19, 2021, Attorney William -- Attorney
17 General William Hong filed objections to, "Bankruptcy plan
18 with legal shields for the Sackler family." Therefore, I'm
19 asking the Honorable Judge Drain for Rule number 3008-1,
20 reconsideration of claims. We need to object to the
21 restructuring of Perdue Pharma and initiate an entirely new
22 vote for the mothers, fathers, brothers, sisters, and all
23 who are now living a life of heartache, depression, and
24 loneliness from this drug that had been evaluated years
25 earlier by the Perdue Corporation and hidden from the public

1 that highly addictive and shoved under the proverbial rug.

2 Are the Sacklers and their lawyers at Davis Polk
3 and Wardwell willing to clone my dear son or bring him back
4 to help me in my disabled old feeble age? I don't think so.
5 thank you, Your Honor.

6 THE COURT: All right. And thank you, Ms. Ecke.
7 I will say just one point, and that is that it obviously
8 took a lot of courage to say what you've said in this
9 setting. I some people will disagree with it, and I think
10 there are some points that just weren't right like Davis
11 Polk being the Sacklers' lawyers, which is not true. But on
12 the other hand, what comes through very clearly is I think
13 the main point of your objection and your statement, which
14 is that this company's product or products caused tremendous
15 pain and harm.

16 And it is turning over all of its assets under
17 this plan in a way that the parties interested in the case
18 have determined best resolves that pain and harm knowing
19 full well that it never can resolve that pain and harm, and
20 that is something that will never be fully resolved or even
21 partially resolved.

22 THE COURT: All right. We had reserved time at
23 the end of this argument for miscellaneous matters,
24 including further discussion of the release language in the
25 plan. I don't know whether there is a remaining argument on

1 the DMP issues or not.

2 MR. GLEIT: Your Honor, Jeff Gleit of Sullivan and
3 Worcester. I have a -- just a brief statement that I'd like
4 to make in connection with it, and I'm available to answer
5 any questions you have.

6 THE COURT: Okay. That's fine.

7 MR. GLEIT: Okay. Thank you, Your Honor. On
8 Monday morning, Ms. Duvani had stated that the Debtors, the
9 AHC, and the DMPs reached a settlement in connection with
10 substantially all of the DMPs objections. The plan with one
11 narrow exception, that is the objection that the insured
12 injunction improperly deprived certain DMPs of their rights
13 as additional insureds under the DMVT insurance policies.
14 With regard to that objection, the DMPs have agreed to rest
15 on their papers, which can be found at docket 3306.

16 I'd like to make just one brief point, which is
17 not in my firm's reply brief but is addressed in Davis
18 Polk's brief, which is at docket number 3461 at paragraph
19 206. As we've heard throughout this confirmation hearing,
20 the plan contains multiple settlements and transactions, all
21 of which must be approved for this plan to be consummated.
22 As I'm sure Your Honor's aware, the MVT insurance -- insurer
23 injunction is one of these essential and integrated
24 provisions.

25 The Debtor's insurance policies, the rights to

1 which are being transferred to the master disbursement
2 trust, provide a substantial source of value for the
3 abatement distributions and the distributions the personal
4 injury claimants contemplated to be made under the plan.
5 The MVT insured injunction is essential to preserving and
6 ultimately realizing the value. It is integral to the plan,
7 and its applicability to the DMPs is necessary for this plan
8 to be consummated.

9 Absent questions from Your Honor, I will not
10 repeat the arguments which are fully set forth in the briefs
11 of my firm, Davis Polk's firm -- the Davis Polk firm, and
12 the AHC which are located at docket numbers 3506, 3461, and
13 3465 respectively. I do want to, though, note to Your Honor
14 that there was a joint stipulation between the Debtors and
15 the DMPs which was filed at docket number 3612, which
16 contains excerpts from the relevant insurance provisions in
17 the parties' contracts, which the Court may find helpful.

18 So unless Your Honor has questions, I'm happy to
19 cede the Zoom podium.

20 THE COURT: Okay. That's fine. Thank you.

21 Do the Debtors have any rebuttal, or are they
22 going to rest on their papers too?

23 MR. GLEIT: I think you mean the DMPs. I'm
24 (indiscernible) counsel.

25 THE COURT: I'm sorry. Excuse me. The DMPs.

1 WOMAN: No, Your Honor. We rest on our papers.

2 THE COURT: Okay. Very well. All right. So I
3 had a chance to review what I think are the changes that
4 were included in the ninth amended plan that was the subject
5 of discussion at the beginning of this oral argument this
6 morning. I'm assuming that other parties have too at this
7 point. I don't know if there are further changes in it, but
8 I said I would give parties who were objecting to the
9 breadth of the third party injunction release and the plan
10 an opportunity to comment on the revisions and as to whether
11 there was still, in light of those revisions, an issue as to
12 the breadth of the release.

13 And obviously this is without prejudice to
14 objectors' other arguments regarding the release, which I've
15 heard and will be considering. This just goes to the
16 release language. And I don't know if there's been further
17 discussion and agreement beyond what was submitted this
18 morning, so maybe I should ask that question first and then
19 I'll hear from objecting parties. And I see the Debtor's
20 counsel on the screen, Mr. Vonnegut. Have there been any
21 further changes from what was filed this morning or last
22 night?

23 MR. VONNEGUT: Good afternoon, Your Honor. For
24 the record, Eli Vonnegut of Davis Polk and Wardwell. There
25 have been no further revisions to the drafting of the

1 releases. However, we have had several conversations with
2 Mr. Edmunds of Maryland that I think have been helpful in
3 clarifying his understanding of how the releases function.
4 And so I'm happy to walk Your Honor and other parties
5 through those issues so that hopefully everybody else can
6 share that understanding, if that would be helpful.

7 THE COURT: Okay. All right. That's fine.

8 MR. VONNEGUT: Okay. So a number of the questions
9 about the releases that we've gotten this week from Mr.
10 Edmunds I think are premised on some misunderstandings of
11 how they work, so I'd just like to clarify a couple of
12 foundational issues about what is in and what is out.

13 First, there have been a number of references to
14 conduct that is described as unlawful asking whether claims
15 arising from unlawful conduct would not be released. That
16 one is very simple. The very first provision of excluded
17 claims is criminal claims. Criminal claims are not being
18 released, period, full stop. What is a little bit harder
19 and what we have had extensive discussions with Mr. Edmunds
20 about is capacity limitations.

21 So a variety of parties that received revisions
22 under the plan only received those releases for claims
23 against them in their specified capacities. So for
24 instance, with respect to related parties of the Debtor that
25 Mr. Edmunds raised, there were a couple of questions along

1 the lines of if some participant in the pharmaceutical
2 industry had a relationship with the Debtor, do they become
3 released for all claims against them, and the answer is no.
4 The only claims that are released that party are claims
5 against them in their capacity with which they were related
6 to the Debtor.

7 A similar limitation, which we've discussed before
8 but I think it bears emphasis because it's important, is
9 that parties are only released for claims that relate to the
10 Debtor. So they have to be tied to the Debtor. And again,
11 it's not the case that if you have one claim against you
12 released because it is related to the Debtor that other
13 claims become released. You are only released in that
14 limited capacity. So if a party had one relationship with
15 the Debtor and then independent conduct, claims arising from
16 the independent conduct is not released.

17 Now, the most important issue that we discussed
18 with Mr. Edmunds that I think is important to emphasize is a
19 revision that we made in response to Your Honor's commentary
20 on Monday's hearing regarding the settlement with the
21 distributors, manufacturers, and pharmacies, the DMPs. So
22 we had some colloquy about whether those parties are
23 included in the third-party releases. The answer is no, and
24 we've now made that very clear in Section 10.6B, which is
25 the third-party release provision as distinct from the

1 releases of claims held by the Debtors.

2 So we've now added to Section 10.6B a footnote
3 that says co-defendants are not released parties under
4 Section 10.6B of the plan. This is important. As we
5 discussed with Mr. Edmunds, we believe that this addresses a
6 lot of the concerns and the confusion that have been raised
7 regarding the scope of the releases here. "Co-defendant" is
8 a very broad term. It includes any party that is a
9 defendant in a pending opioid action commenced as of the
10 effective date. It also includes any holder of a co-
11 defendant claim. And a holder of a co-defendant claim is
12 effectively anybody who has asserted or might assert a claim
13 against the Debtors to attempt to recoup their own costs in
14 opioid-related litigation.

15 So if you zoom back out, effectively the term is
16 what it sounds like. Co-defendants in the opioid litigation
17 are excluded wholly from the third-party releases. And the
18 only exclusions to that are --

19 MAN: (indiscernible)

20 THE COURT: You can go ahead.

21 MR. VONNEGUT: Excuse me. The only exceptions to
22 that are current a informer, officers, directors, authorized
23 agents, and employees of the Debtors. So I'm hopeful that
24 that helps, Your Honor. I am cognizant that these are
25 complex, and we've been fielding many, many questions as

1 quickly as we can.

2 THE COURT: Okay. All right. Thank you.

3 MR. VONNEGUT: Of course.

4 THE COURT: I have some comments, but I'm happy to
5 hear from other parties first. Maybe they have the same
6 comments.

7 MAN: Your Honor, good afternoon, Your Honor.
8 Sorry, Brian. Do you want to go first, or you want me to go
9 first?

10 MR. VONNEGUT: Oh, one more point that I forgot to
11 clarify. Mr. Edmunds also raised the question of whether
12 the releases might complicate efforts to obtain discovery in
13 unrelated litigation. The answer is that they will not. We
14 received a proposed addition to the plan from Mr. Edmunds
15 that we're working on, but recipients of releases are still
16 obligated to comply with subpoenas and other discovery.
17 We're not attempting to relieve them of that obligation.
18 And that will be made clear in the next amended plan.

19 THE COURT: Okay. I know you both spoke at the
20 same time and then neither of you spoke, so I'll just look
21 to Mr. Edmunds first.

22 MR. EDMUNDS: Thank you, Your Honor. I'll be
23 brief. I think that we've had this -- Mr. Vonnegut and Mr.
24 Huebner and I in various, I guess, combinations have had
25 this discussion for quite some time. The issue -- and I'm

1 not sure that Mr. Vonnegut's presentation exactly resolves
2 it as we agreed over the lunch hour that we took when Mr.
3 Huebner, Mr. Vonnegut and I were on the call to resolve it.

4 But let me just -- the issue narrowly that I have
5 been raising and on behalf of other objecting states have
6 been raising is that the -- is the same one that you went
7 over Monday, which is that the definition of related
8 parties, specifically Debtor-related parties who were
9 released under 10.6B is very broad. And we -- the position,
10 our position, is that those releases are inappropriate if
11 they release people who independently, who are not closely
12 connected with the Debtors, those who have independently
13 engaged in conduct, including conduct that involves the
14 marking and sale of produced opioids. There is -- so there
15 has been --

16 THE COURT: Can I -- I'm sorry to interrupt just
17 for a second. 10.6D, is that the Debtor release or the
18 third-party release?

19 MR. EDMUNDS: It's B, Your Honor, and it's the
20 Debtor release. It's the --

21 MAN: 10.6B is third-party. The Debtor release is
22 10.6A, Your Honor.

23 THE COURT: All right. So --

24 MR. EDMUNDS: Right.

25 THE COURT: -- I think it's important to keep the

1 -- so we're talking about the third-party release?

2 MR. EDMUNDS: Yes, we're talking about the third-
3 party release --

4 THE COURT: All right.

5 MR. EDMUNDS: -- of the Debtor-related parties,
6 and I misunderstood your question.

7 THE COURT: Right. Okay.

8 MR. EDMUNDS: The third-party release of claims
9 against Debtor-related parties --

10 THE COURT: Right.

11 MR. EDMUNDS: -- which is the issue here. And
12 that could be very broad, and that's as literally
13 incorporated as it's broad. There is a new footnote, and
14 this is a new understanding that I understood Mr. Huebner
15 was going to clarify this afternoon on the record, which is
16 that those actors, the related parties who, in their own
17 right, engaged in the same misconduct related to Purdue
18 should not be released and are released, they are arguably
19 partially incorporated in -- if you go through a string of
20 definitions, the definition of co-defendants.

21 And the definition of co-defendants then
22 incorporates the holders of co-defendant claims under which
23 you can make an argument that those who participated in
24 Purdue's opioid-related conduct are, in fact, released by
25 the footnote.

1 MAN: One issue I just want to clarify, the
2 footnote makes clear that co-defendants are not released.
3 That is the purpose of the footnote. It is not expanding in
4 any way.

5 MR. EDMUNDS: I may have miss -- I may have
6 omitted a "not", but I think that's sort of the reason that
7 this is getting difficult. We're going through multiple
8 layers of --

9 THE COURT: Well, if the intent is that they don't
10 have that release, then the parties can make that clear.
11 And that's what I'm hearing, at least.

12 MR. EDMUNDS: I think that we have agreed. I
13 thought it was going to be made clearer on the record. I
14 think that there is still an issue that needs to be that --
15 and Mr. Vonnegut and I have been discussing this by email
16 during the hearing this afternoon. I think that there is
17 something -- some work that we still need to do, and I think
18 that we will be able to do that.

19 But I wanted to -- we may not be arguing before
20 the Court again on this issue, so I wanted to explain
21 overall what the issue is that we are trying to resolve, and
22 that is that wrongdoers shouldn't be released from state
23 police power claims when they've not contributed to the
24 plan. And I think that we're -- there is an agreement in
25 principle as to that. I think we need to make sure that the

1 language is -- it incorporates that and is clear. And clear
2 because I think we'll face interpretive questions over that
3 if it's not in implementing our police powers. So --

4 THE COURT: Well --

5 MR. EDMUNDS: -- that's the concern, and I think
6 --

7 THE COURT: All right.

8 MR. EDMUNDS: -- we can work on that.

9 THE COURT: I want to be clear, though. I think
10 that I heard from Mr. Vonnegut that there was an agreement
11 generally on that point. But on the other hand there are
12 certain causes of action that the Debtor has, such as, you
13 know, failed to supervise vicarious liability, veil-piercing
14 alter ego, things like that where a discharge of the Debtor,
15 if someone was acting just without wrongdoing, you know,
16 without their own knowledge of unlawful conduct, really
17 shouldn't be a back door to violate the bankruptcy discharge
18 or the injunction from those who were contributing.

19 So that's where I draw the line. And it really
20 should go truly to their own independent wrongful conduct,
21 not conduct as, you know, an employee of the Debtor, just as
22 an employee of the Debtor. And this is similar to the
23 language in Section 524(g)(4), you know, which provides for
24 an injunction of claims related to the Debtor based on the
25 third-party's involvement in the management of the Debtor or

1 predecessor to the Debtor, or services as an officer or
2 director or employee.

3 So those types of claims really shouldn't -- I
4 view -- and there is going to be some line-drawing here that
5 you can't do -- inevitably, there might be someone who gets
6 sued where you're not sure until you actually look at the
7 facts carefully, which is why I think they have the
8 provision to come back here. And I've done this once in
9 another case, and I found that the injunction actually
10 applied in one situation but not in another, and that may
11 well happen. But I think if there is separate independent
12 wrongdoing that's short of being illegal, a crime, which no
13 one is protected from by a co-defendant, we do carve it out.

14 And that would cover any -- you know, any third-
15 party like, I don't know, some pharmacy chain that Perdue
16 dealt with. But if you're talking about officers,
17 directors, employees, you know, the case law is pretty clear
18 that you can't, through the back door, go after them just
19 because they worked for a company that you would have a
20 claim against. So I hope that provides some guidance to you
21 all.

22 MR. EDMUNDS: It does, Your Honor, and that's not
23 the issue. The issue is to take, for example, the seven, I
24 think, entities identified on the -- actually, entities or
25 individuals identified on the excluded party list, or at

1 least the corporate ones that are there. Those are actors
2 who engaged in Perdue's marketing, but they're not
3 employees. They're not close to the company. They're not
4 of the kind that you're mentioning.

5 And the idea is just to make sure that these
6 releases do not categorically apply to what Mr. Uzzi
7 referred to this morning as, you know, the undiscovered
8 McKenzie.

9 THE COURT: Right. If -- obviously, if they have
10 engaged in their own separate wrongdoing, and I think the
11 Debtors -- I think if I heard Mr. Vonnegut correctly, the
12 Debtors agree with you on that. It's just a matter of
13 making the language clear.

14 MR. EDMUNDS: Right. I think that's the case.

15 MR. VONNEGUT: That's correct, Your Honor.

16 THE COURT: Okay.

17 MR. VONNEGUT: Unsurprisingly, we think you've got
18 it exactly right. The independent conduct is not released.
19 Co-defendants, period, full stop, do not get third-party
20 releases.

21 THE COURT: Okay. All right. Okay. Should I
22 have Mr. --

23 MR. EDMUNDS: Thank you, Your Honor.

24 THE COURT: Should I have Mr. Fogelman then?

25 MR. FOGELMAN: Thank you, Your Honor. Good

1 afternoon. This is Larry Fogelman on behalf of the United
2 States. Your Honor, as you said while preserving all of our
3 arguments set forth in our statement, the changes made
4 overnight do not address the very issues the Court has
5 raised throughout this hearing concerning the extraordinary
6 overbreadth of the non-Debtor releases, including Your
7 Honor's admonition that the non-Debtor releases should not
8 include fraud concern non-opioid products. Let me explain.

9 First, the release in Section 10.7B still covers
10 everything related to the Debtors, et al. The key language
11 has not changed. The release includes all causes of action
12 based on or relating to the Debtors, to the estates, or the
13 Chapter 11 cases. That covers literally everything. Now,
14 there is a carve-out to the extent that such of action "is
15 based on such shareholder release parties actual and
16 separate non-opioid actual misconduct".

17 But the definition of non-opioid actual misconduct
18 is too narrow and does not clearly permit (indiscernible)
19 concerning the other pharmaceutical products that the
20 Debtors manufactured, including (indiscernible), as well as
21 any other liabilities that could arise from owning and
22 operating a pharmaceutical company, including police and
23 regulatory claims. These could relate to state consumer
24 protection statutes, state public nuisance laws, state
25 environmental liabilities, state workplace safety laws,

1 state employment laws, state civil fraud claims, state fraud
2 and contracting, any state ADA laws, state labor laws just
3 to name a few examples.

4 THE COURT: So, could I interrupt?

5 MR. FOGELMAN: Specifically, Your Honor -- yeah.

6 THE COURT: Could I interrupt you? I had the same
7 reaction, I have to confess, when I read the definition of
8 non-opioid actual misconduct. I had two reactions. The
9 first was I -- it seemed in clause 1 to take away what it
10 gave at the beginning of clause 1. It says an action taken
11 or not taken --

12 MR. FOGELMAN: I --

13 THE COURT: -- deliberately or recklessly in bad
14 faith, and with actual knowledge. So reckless is not with
15 actual knowledge, but so --

16 MR. FOGELMAN: That --

17 THE COURT: -- so it seems to take away language
18 that arguably is there, but that I think it takes away. But
19 more importantly, I have this point. And again, I am
20 distinguishing between releases --

21 MAN: (indiscernible)

22 THE COURT: -- that a debtor can give and is
23 giving here based on the Debtor's own analysis --

24 MAN: (indiscernible)

25 THE COURT: -- and I think everyone else's

1 analysis, as to the types of things that are listed in the
2 language at the bottom of the next definition. Veil-
3 piercing alter ego, agency vicarious liability, constructive
4 notice, controlled personal liability, failure to supervise,
5 or otherwise, with the exception of maybe of controlled
6 personal liability. Those are all things that a debtor can
7 release. Those are all -- there's no contention here that
8 any individual, as to these non-opioid matters, has taken
9 any action that would give rise to anything like this, and
10 it's the Debtor's claim in the first place.

11 So I can see why one would want to make it clear
12 in the Debtor release that this covers this type of conduct,
13 and I don't have a problem with a strike-suit mechanism that
14 has people -- if there's any doubt as to which side of the
15 line it would fall on, bringing their suit here first. But
16 I just -- I don't -- by definition, then, what we're talking
17 about are not debtor claims, but third-parties claims. I
18 just -- I'm not -- I don't see why we are covering them in a
19 release for non-opioid conduct. I just don't -- why?
20 There's no money being paid for that.

21 MS. MONAGHAN: Your Honor --

22 MR. FOGELMAN: Your Honor, I see both Ms. Monaghan
23 and Mr. Uzzi looking like --

24 THE COURT: Right.

25 MR. FOGELMAN: -- they're ready to address that, so

1 I'll let them.

2 THE COURT: Right.

3 MS. MONAGHAN: I'll start, Your Honor, and then
4 Mr. Uzzi can talk you through the language. So I don't want
5 you to get the wrong idea about us. We were trying to draft
6 a release that matched and mirrored the claims that have
7 been made and not anything else. But even though claims for
8 things like alter ego or vicarious liability are estate
9 claims, the complaints here have frequently almost, you
10 know, without exception raised claims on the theory that the
11 former directors are vicariously and strictly liable for
12 everything the company did.

13 THE COURT: Yeah, and I --

14 MS. MONAGHAN: So for example --

15 THE COURT: -- want to be clear. I don't have a
16 problem with that as far as the language of a release, again
17 tracking 524(g)(4). But we're talking now about non-opioid
18 conduct, and --

19 MS. MONAGHAN: So let me turn to that.

20 THE COURT: -- if someone just, you know, says
21 that director so-and-so or officer so-and-so, not a Sackler
22 person, but just -- you know, or a Sackler I suppose, is
23 liable for alter-ego, that's an estate claim, and it's being
24 released by the estate. So I don't think -- I think other
25 than having a mechanism to come to the court if you're going

1 to be asserting such a claim, you need anything more than
2 the estate release to the Debtor release. And it just
3 complicates things to include all this other stuff, and the
4 alter-ego, etc.

5 Because what is the other stuff? It has to be
6 something broader than that, that isn't an estate claim.
7 And if it's for non-opioids, I don't see -- I mean, that's
8 not been the focus of the case. It's not the basis for the
9 settlement.

10 MS. MONAGHAN: So, Your Honor, we tried to draft
11 the release in a way that addressed what we see as the
12 fundamental problem with the non-opioid claims, which is
13 that they are often opioid claims in disguise.

14 THE COURT: Well, all right, but that would be
15 released. And so, you could say that, again, even if it's a
16 opioid claim in disguise, it's released and you have to come
17 to the Court if you're saying no, it's not in disguise, so
18 you don't have litigation in Florida by the equivalent of
19 the people in the Madoff case that kept saying, oh, it's not
20 really a claim against the Madoff estate, it's something
21 else.

22 MS. MONAGHAN: That, frankly, Your Honor, is what
23 we were nervous about. The concept that the release extends
24 to or does not extend to non-opioid related activity that a
25 person actually undertakes, as opposed to something that's

1 just being attributed to them by virtue of their position as
2 a director or shareholder.

3 THE COURT: All right.

4 MS. MONAGHAN: That is what we were trying to
5 capture.

6 THE COURT: Okay, but --

7 MS. MONAGHAN: If the language doesn't do that, I
8 think we can try to address.

9 THE COURT: I don't think -- see if I get this
10 right. I don't think the way to address those concerns,
11 which are legitimate ones, is to create a category of
12 misfeasance that is excluded from the release. I think it's
13 to create a category that's clearly covered by the Debtor
14 release and to make it clear that you can't get around the
15 settlement release, which is over opioid related claims, by
16 creative pleading.

17 And ultimately, the Court that imposes the release
18 should be the person that decides whether it's creative
19 pleading or whether it's legitimate, and that is an issue.
20 I mean, that, as I said in the case that I was referring to,
21 the released party one on one point and lost on the other
22 one and, frankly, the only one that had any value was the
23 one they won on, so the party stopped suing.

24 But that plan didn't have the gatekeeping
25 mechanism. They had to go down to Florida and they had an

1 extra, you know, two stages of litigation and expense before
2 they finally got up here. But I think I'm happy with the
3 gatekeeping mechanism like that if the gate is clear enough.

4 MR. UZZI: Your Honor, for the record, Gerard Uzzi
5 of Milbank on behalf of the Raymond Sackler Family.

6 Look, we take a great deal of comfort with the
7 gatekeeping mechanism. But it does matter what those gates
8 are or what the gate that needs to go through, I guess, is
9 the better, you know, metaphor.

10 But, you know, I do think, and I'd like to address
11 for a moment, Your Honor, what these releases were always
12 intended to pick up and whether it's supposed to be non-
13 opioid -- excuse me -- only opioid liability or whether it
14 was supposed to be broader than that.

15 And, Your Honor, I think we need to put these
16 releases and this plan in the context of the facts and
17 circumstances that brought this plan before the Court. And
18 along those facts and circumstances are that we were
19 approached by our counterparties -- so the creditors are
20 large, the Debtors here, the fiduciaries -- to negotiate a
21 release that was expressly supposed to be what we've said
22 global peace, but, you know, is a complete and clean
23 separation from these Debtors for all civil liability.

24 And that's in the record, Your Honor. It's in the
25 record, Ms. Conroy --

1 THE COURT: It really isn't. I mean, David
2 Sackler said it was for opioid liability. I know others
3 said --

4 MR. UZZI: Well, he said --

5 THE COURT: -- they wanted global peace and they
6 were going to rely on the lawyers. But look, the way this
7 reads right now, non-opioid actual misconduct, if David
8 Sackler -- it probably hasn't happened, but if he was in a
9 car accident where he was negligent, it would be released
10 because this doesn't cover negligence and that can't be
11 right.

12 MR. UZZI: Well, I agree with that, Your Honor,
13 but I don't believe it's -- I believe it can't be right, but
14 I also don't believe that's what's picked up here. I mean,
15 I don't -- if he's in a car accident, whether he's negligent
16 or not --

17 THE COURT: Well, all right. If he was driving a
18 company car.

19 MR. UZZI: I don't -- I don't believe, Your Honor,
20 that is in the release as it relates to -- and it was Mr.
21 Vonnegut said there are capacity limiters on both ends of
22 the release, and there's a capacity limiter also with
23 respect to the party who's granting the release.

24 And so, you know, a car accident in a company car
25 that is the negligence of the individual person is not an

1 action taken in the capacity as the employee or the director
2 or the shareholder or whatever it may be of the Debtors, and
3 we're not trying to pick that up, Your Honor.

4 What we were trying to do here, Your Honor, what
5 we were trying to do is we're trying to be responsive to the
6 allegation of or maybe a concern that if there were facts
7 that were later discovered that people would have said, hey,
8 you know, that was conduct that should not have been
9 released had we identified it today that it can be picked up
10 here.

11 But if we listen to the testimony, Your Honor, and
12 the questioning in this case -- I mean, you know, in the
13 record, you know, as far as the investigation that --

14 THE COURT: Well, all right, I'm going to cut you
15 short. I just think that would mean then that this language
16 is, I think, too narrow. I understand your point. If
17 someone is being sued just because they were a board member,
18 all right, or just because they were an officer because it
19 turned out that, you know, Purdue had negligently put
20 together the formula for a non-opioid drug and they were
21 just being sued as an officer or an employee, I think the
22 Debtor release covers it.

23 But I also think there are probably claims that
24 are not deliberate and with actual knowledge that
25 legitimately someone's conduct might actually -- their own

1 conduct, not just conduct as an officer, but their own
2 individual conduct would make them liable for that product,
3 and we've done nothing about that hypothetical product in
4 this case. So either this has to be really --

5 MR. FOGELMAN: Your Honor, can I give --

6 THE COURT: I mean, look, in the case --

7 MR. FOGELMAN: I'm sorry.

8 THE COURT: In the case law, the Second Circuit,
9 including in the Quigley case and in the Manville IV case
10 after the remand from the Supreme Court has really cabined
11 the term derivative -- or actually expanded the term
12 derivative from how it's normally used, which is a claim on
13 behalf of the debtor or through the debtor to be something
14 broader than that. But there's some limits to that, and
15 it's not just based on, you know, actual knowledge of
16 misconduct or bad faith or deliberate. It can be separate
17 and independent conduct.

18 So I want to -- I think if you're going to cover
19 non-opioid claims, it really needs to be something more than
20 just Debtor related and really bad stuff.

21 MR. FOGELMAN: Can I -- sorry.

22 THE COURT: I mean, non-debtor related or really
23 bad stuff, because you can have debtor-related stuff that I
24 think would fall outside of the Second Circuit's admittedly
25 broad definition of what a derivative claim is, is that

1 entitled to a release under the right circumstances under a
2 plan, and I don't think this language does it.

3 And you can spend a lot of time dealing with that
4 language or you can just carve out non-opioid conduct,
5 except for conduct that is independent of one's acting under
6 one's duty as an officer, director, or, you know, alter ego,
7 veil piercing, et cetera, all of which is clearly
8 derivative.

9 MR. FOGELMAN: Your Honor, that's all helpful, and
10 I take to heart your comments that you believe that many of
11 those claims, like the failure to supervise claim, would be
12 a Debtor claim. That may be right, Your Honor, it may not
13 be, depending upon how somebody would plead it.

14 I'd like to give you the example or one of the
15 examples we're trying to solve for Your Honor, just to put
16 it clearly out there. You've heard a lot about Adhansia in
17 the questioning, and there's certainly a fair amount of
18 inuendo about Adhansia and what the Sacklers involvement in
19 Adhansia may have been. Adhansia was one of the search
20 terms in the discovery that was taken.

21 There's been plenty of discovery and plenty of
22 investigation about Adhansia. Adhansia was not approved by
23 the FDA until all of the Sacklers were off the board.
24 Adhansia wasn't launched until about the petition date.

25 And so, anything that relates to Adhansia, the

1 marketing and sale of Adhansia has been done by a Chapter 11
2 debtor with a pristine board under the supervision of this
3 Court and under the supervision of a court-appointed
4 monitor. Yet, yet there seems to be a pretty clear effort
5 that people want to string something along and tie some sort
6 of wrongful conduct to the Sacklers around Adhansia.

7 Now, if in fact, one of the Sacklers or one of the
8 released parties, not just the Sacklers, did something with
9 respect to Adhansia that was reckless or deliberate and
10 intended to cause harm, of course, that should be carved
11 out, Your Honor.

12 But these creative legal theories on trying to --
13 and I'm just picking Adhansia of one example of trying to
14 bring the Sacklers back in and seems to be intended to get
15 through a back door is what we're trying to solve for.

16 I'm not particularly wedded to how we solve for
17 that, Your Honor, but it is something that either --

18 THE COURT: Again, to me, if people are suing
19 them, I guess it's perfectly legitimate to not to want to
20 have your clients even be sued for just being on the board,
21 which includes getting information, or for being an officer.

22 But at the same time, you're putting the onus on
23 the party suing to show not only that that isn't the case,
24 but also that they acted deliberately, recklessly, or in
25 some other standard that's not really tied, I think,

1 necessarily to a cause of action that would be independent.
2 I think you might be trying, although I didn't like this
3 language, to do that.

4 But I think a -- I mean, I just -- Adhansia is not
5 a control person liability type of liability, right? It
6 just isn't. That's not --

7 MR. FOGELMAN: I don't know, Your Honor. I mean,
8 that's the problem that I have. I just -- I don't know.

9 THE COURT: But no one has asserted in this case,
10 it's just can't be -- and they're not paying for it.

11 MR. FOGELMAN: No, but, Your Honor --

12 THE COURT: They're paying for peace of mind --

13 MR. FOGELMAN: Your Honor --

14 THE COURT: -- over something that I think they
15 get peace of mind on just by the fact that they can't be
16 sued as an officer and director.

17 MR. FOGELMAN: I think what we bargained for, Your
18 Honor, is a complete separate from civil liability.

19 THE COURT: No, I don't --

20 MR. FOGELMAN: Now, I recognize --

21 THE COURT: The record doesn't show that. I'm
22 sorry, the record just doesn't show that.

23 MR. FOGELMAN: I think that --

24 THE COURT: It doesn't show that.

25 MR. FOGELMAN: Your Honor --

1 THE COURT: It doesn't show that your clients
2 bargained, for example, for release from CERCLA liability.

3 MR. FOGELMAN: It's (crosstalk).

4 THE COURT: It just doesn't.

5 MR. FOGELMAN: Your Honor, I mean, the settlement
6 agreement and this plan speaks for itself as far as what the
7 bargain was. The testimony of Miss Conroy made it clear
8 that they wanted the peace premium, that they want to be --

9 THE COURT: Miss Conroy is a PI lawyer. She's not
10 an environment lawyer. If the Sacklers have control group
11 liability for an undiscovered Superfund site, I'm not giving
12 them a release. It's just not going to happen period.

13 MR. FOGELMAN: But, Your Honor --

14 THE COURT: It's not going to happen period. It's
15 not going to happen, and the lawyers should realize it.
16 That's it. I've given you enough time to draft it. I'm
17 telling you how it should be drafted now because you
18 haven't' drafted it. I am not releasing them from a
19 Superfund site, for example, which would be related to
20 Purdue. That's not what this case is about. Had enough of
21 this.

22 MR. FOGELMAN: Your Honor, we will --

23 THE COURT: And no court would affirm me if I did
24 on appeal.

25 MR. FOGELMAN: Your Honor, they think --

1 THE COURT: It didn't even affirm -- it wouldn't
2 have affirmed Judge Lifland if the interpretation was right
3 as to the separate fraud of the insurance company to the
4 asbestos claimants. Now the question wasn't that it was
5 fraud; it's that it was separate. So you can't define your
6 way out of that by behavior unless you cover all of the
7 types of claims that could be raised for separate conduct,
8 not the Debtor conduct or as an officer and director of the
9 Debtor.

10 So look, you're not going to persuade me on this,
11 that you're just not going to persuade me.

12 MR. FOGELMAN: I'm not trying to persuade you to
13 go further, Your Honor, then I think what I'm asking for.
14 What we've tried to address is that very issue of the
15 separate conduct. Maybe we didn't do it well. We will take
16 another shot at this, Your Honor, and try and submit
17 something.

18 THE COURT: All right, but the times a' wasting.

19 MR. FOGELMAN: Understood.

20 THE COURT: And I think there are going to be
21 examples that you're not going to be able to cover unless
22 you do it the other way around and not do it with the
23 gravamen of every potential truly separate claim and instead
24 say that this release will cover, because it's a Debtor
25 release, as to non-opioid conduct claims that the Debtor

1 would have and those are expansive, including derivative
2 claims for acting improperly on the board, for example.

3 But if there's a separate claim that doesn't fit
4 into that and it comes back to the Court and the Court finds
5 that, this release shouldn't cover it.

6 MR. FOGELMAN: That's helpful.

7 THE COURT: I think that the released parties
8 should have the protection of strike suits brought all over
9 the country. Instead, they should be channeled here, and
10 you should be able to show this to a state court or a
11 federal court in wherever, Tennessee or Florida or wherever,
12 saying, no, you know, they had to come to the bankruptcy
13 court first to decide whether this provision applied or not.

14 I understand that and I've encouraged that, but I
15 just don't think you can define out by qualitative types of
16 misconduct from this release, unless they're going to pay a
17 lot more than they're paying because they're not paying to
18 be released from a CERCLA claim, for example.

19 MR. FOGELMAN: And, Your Honor, we were not trying
20 to do that, so --

21 THE COURT: Well, but this -- I mean, that would
22 be the effect.

23 MR. FOGELMAN: Understood, Your Honor. Well,
24 there is a separate carveout for all federal liabilities, so
25 technically --

1 THE COURT: Well, state law equivalent.

2 MR. FOGELMAN: But understood, Your Honor, but
3 understood.

4 THE COURT: All right.

5 MR. FOGELMAN: So we will do our best, Your Honor,
6 to accommodate or to address your --

7 THE COURT: All right. No, Mr. Fogelman, I think
8 -- I mean, you have other points, but there is a balance
9 here under the case law. And I'm not asking you to waive
10 your rights to say that case law is wrong, but there's a
11 balance here between how the Second Circuit defines broadly
12 derivative actions that can be enjoined and separately
13 independent actions that can't. And I think what I'm
14 getting at is how you draw that line.

15 MR. FOGELMAN: I appreciate Your Honor's
16 considering our argument, and I have nothing further at this
17 time. Thank you.

18 THE COURT: Okay. All right. I mean, look, this
19 is all over the case law. The Carter Corporation, Judge
20 McMahon says, you know, you address what you were settling
21 and not everything else, and they rewrote the plan in
22 Carter. It was a small plan, it's a small construction
23 company, but they rewrote it, and they shouldn't have had
24 to.

25 MR. SCHWARTZBERG: Good afternoon, Your Honor.

1 Paul Schwartzberg from the U.S. Trustee's Office.

2 THE COURT: Afternoon.

3 MR. SCHWARTZBERG: Thank you, Your Honor. I just
4 wanted to take up the opportunity Your Honor had offered.
5 We do have a few comments on the recent changes, in addition
6 to what we had filed in our objection and our oral
7 arguments.

8 And I wanted to bring the Court's attention of the
9 new definition of shareholder releases, which is now Exhibit
10 X to the shareholder agreement, as well as the defined term,
11 "designated shareholder release parties," which is Exhibit S
12 to the shareholder agreement. And I wanted to point out --
13 Your Honor, can you hear me?

14 THE COURT: Yes. I can hear you fine.

15 MR. SCHWARTZBERG: Okay. All right, thank you,
16 Your Honor.

17 I wanted to point out first the shareholder
18 agreement as testimony shared, it has not actually been
19 finalized yet, so the released parties are Exhibit X and
20 Exhibit S could be expanded and we don't know who those are.
21 And, in fact, Your Honor, pursuant to the shareholder
22 agreement of Section 1106, even after it's signed, it could
23 still be amended, and I think between agreement of the NBT
24 and the Sacklers. So we're concerned that even after --

25 THE COURT: I'm assuming it will be attached to

1 the confirmation order and the parties will have a chance to
2 review it before the order is entered.

3 MR. SCHWARTZBERG: But, Your Honor, even after the
4 order is entered, the shareholder agreement does allow --

5 THE COURT: No, no, not after the order is entered
6 because that's the injunction.

7 MAN 1: Your Honor, we're not going to be adding
8 parties.

9 THE COURT: No.

10 MAN 1: Mr. Fogelman doesn't need to worry about
11 that.

12 THE COURT: They wouldn't be able to even if they
13 wanted to. They're not going to do that.

14 MR. SCHWARTZBERG: Could they make the case,
15 Section 11.06 to make it clear that the amendments that they
16 can make only are up to confirmation?

17 THE COURT: Well, put it in the confirmation
18 order. The Court's approving this and nothing further.

19 MR. SCHWARTZBERG: Thank you, Your Honor. That
20 would be very helpful.

21 THE COURT: Okay.

22 MAN 1: That works for us, Your Honor.

23 MR. SCHWARTZBERG: And as I said also, Your Honor,
24 Exhibit X still -- we were talking about the breadth of the
25 releases. Exhibit X still includes as related entities the

1 businesses, the assets, and the entities owned by Side A.
2 We believe this is overly broad and, in fact, I believe it
3 was Mr. Mortimer Sackler had indicated he couldn't even
4 identify all of his investments, so we think that term is
5 too broad.

6 THE COURT: Why?

7 MR. SCHWARTZBERG: Unidentified, Your Honor, at
8 this point. We can't identify.

9 THE COURT: But if you cabin the -- there's no --
10 these are the payors, right? And as we've just discussed,
11 what's going to be released as far as third parties is
12 opioid-related claims. So there's no indication that any of
13 these entities, separately and apart in conjunction with
14 Purdue, was engaging in any opioid-related activity.

15 On the other hand, they are backing up the payment
16 of the plan.

17 MR. SCHWARTZBERG: Our concern, Your Honor, is
18 these are entities that even the Sacklers may not know.

19 THE COURT: But -- all right. Keep going.

20 MR. SCHWARTZBERG: I'll move on to my next point,
21 Your Honor.

22 THE COURT: Okay.

23 MR. SCHWARTZBERG: In regard to the --

24 THE COURT: I guess you haven't read the discovery
25 that the committee and the Debtors had, right?

1 MR. SCHWARTZBERG: That's correct, Your Honor.

2 THE COURT: Okay. They have.

3 MR. SCHWARTZBERG: Your Honor, in regard to the
4 non-opioid misconduct claims, we -- I think you had
5 addressed that, and we just reserve our rights on that to
6 see what the new drafting is regarding this because we had
7 concerns regarding that.

8 And then last point, Your Honor, I had is just a
9 concern regarding, once again, the breadth of the releases.
10 We do note that the Debtors -- we're trying to figure out if
11 the Debtors are including released parties that are not --
12 releasing parties that are not -- or causing releases that
13 will be suffered by parties that are not creditors of this
14 case.

15 The releasing parties include holders of claims
16 and causes of action. And I know the bankruptcy code
17 defines creditors in this case as just part of the holders
18 of claims. So when they throw in holders of claims and
19 causes of actions, it makes it look like they're trying to
20 expand those who are going to give releases to those who are
21 not creditors in the case. And if they need to limit it to
22 just people who are creditors in the case, they should make
23 it clear in the documents, Your Honor.

24 And I believe those are the only additional
25 comments I had, unless Your Honor has any questions.

1 THE COURT: Okay.

2 MR. UZZI: Nothing further from the Debtor, Your
3 Honor.

4 MR. GOLDMAN: Your Honor, may I be heard briefly?

5 THE COURT: Sure.

6 MR. GOLDMAN: Irve Goldman, Pullman Comley, for
7 the State of Connecticut.

8 I had agreed to very briefly address this argument
9 under the miscellaneous topic, as opposed to separately. I
10 don't expect to take more than five minutes on this, Your
11 Honor, so I hope you'll bear with me.

12 So I'm presenting this in addition to the states
13 that joined our objection either expressly or by
14 incorporation, and also on behalf of Rhode Island and
15 Delaware. It relates to the argument in our brief that the
16 plan infringes on the states' rights to have had their
17 police power claims adjudicated with damages fixed in the
18 actions they commenced against Purdue in their own courts.

19 And this relates to Section 362(b)(4), the
20 legislative history of which provides that the purpose of it
21 is to allow a government action for a violation of a
22 consumer protection law to proceed unabated by the automatic
23 stay in order to "fix damages for violations of such a law."

24 The plan takes away that right by channeling all
25 the states' claims to the NOAT Trust, which will be funded

1 by the Sackler plan contributions, and then distributing
2 those funds based on a state-by-state allocation percentage.
3 And in fact, it's a pot plan from which the states will take
4 their allocated share of what is put in the pot.

5 This mechanism, we contend, eliminates the states'
6 rights to fix damages in their own actions, and therefore,
7 the plan doesn't comply with the applicable provisions in
8 Title 11.

9 I realize it would have been administratively
10 cumbersome and time-consuming to have allowed for the fixing
11 of damages in those actions in this case, but that is simply
12 the hand the Debtors were dealt when they invoked the
13 protections of the bankruptcy court, and I would submit they
14 must therefore live with the burdens of the Code. And that
15 is set forth in 362(b)(4).

16 I would also submit that administrative
17 convenience can't be allowed to trump the clear protection
18 provided for states to fix their claims for damages without
19 being held up by the automatic stay.

20 THE COURT: Well --

21 MR. GOLDMAN: And that's all I have, Your Honor.

22 THE COURT: -- that's already been litigated and
23 affirmed on appeal, without any further appeal. I'm not
24 quite sure what you're saying at this point. Are you
25 suggesting that even though 362 by itself wouldn't apply

1 post-confirmation, that somehow they would have a right to
2 liquidate their claims, even though they would get whatever
3 recovery they'd get under the plan? So they would --

4 MR. GOLDMAN: No, I'm not saying --

5 THE COURT: -- the states would actually spend the
6 money to do that?

7 MR. GOLDMAN: No, I'm not saying that, Your Honor.
8 I'm saying that that was a preliminary injunction. It
9 wasn't a permanent injunction --

10 THE COURT: Right.

11 MR. GOLDMAN: -- to stay the states. And the fact
12 that we're at the confirmation stage should not cut off the
13 rights to have liquidated those claims --

14 THE COURT: That's the --

15 MR. GOLDMAN: -- because of --

16 THE COURT: -- whole reason that the... Look,
17 Congress, in the legislative history made it clear that one
18 could still enjoin police power under the right
19 circumstances to liquidate a claim. And of course, the
20 provision itself says it doesn't apply to payment of the
21 claim. The plan is just providing for payment of the claim.

22 So I just -- I hear your argument, but frankly, it
23 makes no sense. It's another sand in the gears. I mean,
24 it's just...

25 MR. GOLDMAN: I hear Your Honor. I'm just trying

1 to make the point that I understand the injunction was
2 issued and it was preliminary. I don't think that that
3 means we shouldn't have had the right to -- before the plan
4 reached the confirmation stage -- to liquidate those claims,
5 instead of having them just put into a trust based on an
6 allocation formula.

7 THE COURT: In fact, the injunction applies
8 through confirmation, and then the stay is no longer in
9 place, and therefore, 362 doesn't apply at all. Instead,
10 it's the plan.

11 MR. GOLDMAN: I would maintain that because of
12 that, our rights are subverted under 362(b)(4). And I'll
13 just leave it at that, Your Honor.

14 THE COURT: Okay.

15 MR. KAMINETZKY: Your Honor, if I could briefly
16 respond? Benjamin Kaminetzky, of Davis Polk, for the
17 Debtors.

18 THE COURT: Okay, fine.

19 MR. KAMINETZKY: I know -- I'm actually so happy
20 that this was raised, because we've all been wondering what
21 plan B was for the objecting states, and I think this is
22 just a perfect way to end today. Because what they're
23 saying is that we should go back to the first day of this
24 case, when the Debtors basically said, we're done, we're not
25 litigating anymore. In Your Honor's words, we've given

1 ourselves up.

2 But they're still demanding -- and then we've
3 worked for months and months, years, on a distribution
4 mechanism, but now they're saying, you know what, we want to
5 have a trial anyway on the merits against the Debtors, who
6 aren't contesting liability, just for like fun, so that we
7 could then...

8 I don't know -- are they saying then they'll go
9 back to the NOAT anyway after they have their show trial,
10 that we're not contesting liability, and they'll abide by
11 the NOAT? Or are they saying, no, we won't; we'll jump the
12 line, and the State of Connecticut will ignore the last two
13 years, and we'll get our judgment against the Debtors, who
14 aren't contesting liability, and we'll get everything? It
15 is just so confounding.

16 And I'm actually -- this is a great way to end the
17 hearing because what we've just showed is that there's
18 absolutely no alternative other than going back to September
19 of 2019, relitigating the automatic stay, having Your Honor
20 give us this day. And this isn't even what was
21 controversial about the automatic stay.

22 Remember, the automatic stay that was the most
23 controversial was the Sacklers. He's saying he wants to
24 litigate. They want to have 50 trials. Maybe it's even
25 more. Maybe because -- I'm not sure if this goes to all the

1 instrumentalities of the stay too, so we should have
2 thousands of trials around the country against a Debtor that
3 admitted on the first day that it's no longer contesting
4 liability.

5 It is just the insanity -- or, I shouldn't say
6 that -- the idea that this is what's being advocated at this
7 point, right here, at the last minute of the confirmation
8 hearing, I think speaks volumes.

9 THE COURT: Well, look, I think... I want to say
10 this diplomatically. There have been times in this case
11 where the high quality of the lawyers has actually not been
12 a good thing, because lawyers who are really creative and
13 thoughtful sometimes come up with ideas that maybe seem well
14 in the shower, but actually don't make any sense. And I
15 just...

16 Look, Mr. Goldman, your clients have made some
17 good points going to the merits of the Sackler settlement.
18 That's where the focus should be, not on something like
19 this. This is just not constructive. So, I would hope the
20 parties would continue to discuss the former, and not burden
21 this case with the latter.

22 MR. GOLDMAN: I hear you, Your Honor.

23 THE COURT: Okay. All right. Mr. Underwood, I
24 don't know if you had a comment on the release language, or
25 you just...

1 MR. UNDERWOOD: Yes. I have a very quick comment,
2 Your Honor, that I want to raise. We have a provision in
3 the plan. It's very straightforward as well. We have a
4 provision in the plan that regards excluded claims. There
5 is a portion of that provision that addresses Canadian
6 claims, or Canadian claims against Purdue Canada.

7 We now have language in that provision that says
8 that non-opioid actual misconduct claims are effectively, I
9 guess, released. And this is --

10 THE COURT: No, that's what we've just been
11 talking about, so I wouldn't worry about that.

12 MR. UNDERWOOD: Okay. And the second aspect of
13 that, very quickly, Your Honor. My understanding is -- and
14 I did ask the Debtors' counsel about this last evening, or
15 this morning -- provision 11.1(e) would then suggest that if
16 there's any provision such as the non-opioid actual
17 misconduct claim in the excluded claim, we would have to
18 come back to the United States to get approval. It seems a
19 little untoward that the Provinces at this point would have
20 to come to Your Honor in order to bring, you know, a federal
21 conveyance action against a Canadian entity.

22 I just want to put that on the record, make sure
23 the Debtor understood where I was coming from.

24 THE COURT: No. Look, first of all, claims
25 against the Canadian entity would have to be for fraudulent

1 -- I don't think there's any release of a fraudulent
2 transfer claim against the Canadian entity in this plan.

3 MR. UNDERWOOD: Okay. I'm not -- perhaps it's not
4 a release. But what this seems to say is -- and I don't
5 want to delay this further, but -- a claim that is not based
6 upon conduct of the Debtors, including opioid-related
7 activities of the Debtors, and that effectively -- or any
8 non-opioid actual misconduct claim.

9 So I would presume that any Canadian creditor
10 could argue in Canada that the officers, directors,
11 Sacklers, owners, whomever, have left the Canadian entity
12 with unreasonably small capital. That, to me, would be the
13 type of claim that may be a non-opioid claim that could not
14 then be brought.

15 THE COURT: Again, but I want to be clear, if it's
16 just against these third parties because they are an
17 employee or officer of the Debtor, which would be, I guess,
18 the transferee, then, yeah, they would have to come back
19 here if there's any question about that. It would have to
20 be based on their own independent conduct. So, for example,
21 if they were a transferee of the Canadian company, then you
22 wouldn't have to come back here.

23 MR. VONNEGUT: Your Honor, may I address this
24 point? I think I should be able to clear up some confusion.

25 THE COURT: Okay.

1 MR. VONNEGUT: So, the gatekeeping function that
2 Mr. Underwood is referring to in 11.1(e). That only applies
3 to non-opioid actual misconduct claims, which are their own
4 prong under excluded claims. The claims against the
5 Canadian entity that are not tied to the Debtor, those are
6 separately excluded claims, and there's no gatekeeping
7 function if he's pursuing those claims.

8 THE COURT: No, but his point was a different one,
9 which is if the Debtor or a released party was being sued
10 for having received a fraudulent transfer by the Canadian
11 company, whether they would have to -- the Plaintiff would
12 have to come to this Court as a gatekeeping mechanism to
13 proceed.

14 And this should be able to be drafted so that the
15 gatekeeping mechanism doesn't apply to clearly independent
16 claims such as that, where if board member X received
17 \$100,000 as a gift from Purdue Canada, he wasn't a board
18 member of Purdue Canada, didn't do anything for Purdue
19 Canada, was just a -- you know, they decided to give him a
20 gift, and Purdue Canada was insolvent. If under applicable
21 fraudulent transfer law in Canada, that would be a
22 fraudulent transfer law, I don't think you should have to
23 come to this Court to sue that board member.

24 MR. VONNEGUT: Understood and agreed, Your Honor.

25 THE COURT: Right. So, on the other hand, if

1 Purdue Canada is suing the board member because she was a
2 board member of Purdue when Purdue got a fraudulent
3 transfer, you would have to come to the Court, because if
4 the only basis for the lawsuit is -- or the basis for the
5 lawsuit, or a basis for the lawsuit, is that she was just a
6 board member. And that's a veil-piercing claim, and the
7 creditors -- those types of claims are subject to the
8 discharge, the Debtors' discharge, because you're just
9 trying to do a backdoor to get at the Debtor through the
10 insurance and through the former officer or director.

11 Okay. All right. Anything else?

12 MR. HUEBNER: Your Honor, one very last thing from
13 the Debtor. As Your Honor noted last week, there are
14 extraordinary letters and other filings on the docket, and
15 actually, we just wanted to echo the courage that it takes
16 to tell stories, and specifically to come to court as a non-
17 lawyer is extraordinary. Those are things that all of us
18 weigh and worked on, and we read many of those in working on
19 all this.

20 We (indiscernible) for many parties. I think that
21 we all owe the Court and chambers -- whichever way the
22 confirmation hearing ends and whatever order is issued,
23 we're all aware that we have dumped thousands and thousands
24 of pages on the Court. And I think that -- you know, I just
25 wanted to note that as we move towards the closing of the

1 confirmation hearing, in probably the most difficult Chapter
2 11 case in history in terms of what is at stake, in terms of
3 what was at stake, in terms of the national health issues
4 and the impact of the crisis. And it seemed odd to end the
5 hearing without some recognition of the just extraordinary
6 nature, in every possible way, of these proceedings.

7 THE COURT: Okay. Well, certainly I want to thank
8 the Clerk's office.

9 MR. HUEBNER: Yes. Including certainly that the
10 Zooms for hundreds of people and the accessibility in the
11 (indiscernible). So I won't belabor the record. It just
12 felt appropriate to say something, given what we've all been
13 working on together.

14 One last thing, Your Honor. There are obviously
15 still some documents to be finalized. Those things are
16 moving along at warp speed and the emails are being
17 exchanged. Obviously, we're aware that those things have to
18 be done and on file prior to entry of the confirmation
19 orders and the like. Obviously, Your Honor gave some pretty
20 clear guidance on some of the restructuring issues within
21 the last hour, which we will attend to; the shareholders
22 settlement agreement, in addition to the representations we
23 just talked about, about not letting anyone add any further
24 parties.

25 So those things will be hitting the docket in

1 revised forms as fast as we humanly can get the parties sort
2 of shepherded together to do that.

3 I see Mr. Troop has come on (indiscernible) I
4 assume that is not an accident, since he is quite nimble in
5 Zoom and appears, I think, only when he plans to. So let me
6 ask him what he wants to talk about, and maybe that will be
7 what brings us home.

8 MR. TROOP: Well, thank you very much, Mr.
9 Huebner. Your Honor, Andrew Troop, for the Nonconsenting
10 States.

11 Your Honor, I actually don't want to divert at all
12 from the (indiscernible) truly heartfelt comments by the
13 Court and Mr. Huebner with respect to the individuals in
14 this case. I think it's something that all of us who don't
15 represent individual victims (indiscernible) that we all
16 share, and our admiration for the two victims who spoke
17 (indiscernible).

18 But do we have some process things that we have to
19 get to, and Mr. Huebner touched on them. And we just need
20 to make sure that we, at the appropriate time and in the
21 appropriate way, do not lose sight of the issues that remain
22 unresolved and may be subject to debate with regard to how,
23 for example, the Sackler settlement is resolved.

24 Your Honor, this afternoon during the hearing,
25 Your Honor, the Debtors filed a revised perspective

1 injunction for NewCo, where there is an issue that is
2 identified (indiscernible) open, and we just need to manage
3 that process and want to do so in a way that's efficient for
4 the Court. And so we will continue to work on that with the
5 Debtors.

6 But this is a complex case with lots of threads
7 still untied, and we just need to make sure that we don't
8 lose sight of that.

9 THE COURT: Okay. Fair point. I've told the
10 parties that I intend to rule Friday morning at 10:00. I
11 intend to give you a bench ruling. As you know, I believe
12 it's important in cases large and small to move the matter
13 promptly, after having heard the evidence. And given my
14 calendar, that's the best way to do it. As I often do with
15 a lengthy bench ruling, I'll go over the transcript, and I
16 may edit it, although I won't change it in terms of the
17 substance. But I think it's important for the parties to
18 get that ruling and know that they're going to get it on
19 Friday morning.

20 However, if the parties, as I have encouraged them
21 to do, will reach some form of agreement, either among
22 themselves or with the efforts of Judge Chapman as mediator,
23 they can let me know before I give that ruling, if they want
24 to circulate it, socialize it, make sure everyone
25 understands it. I won't be offended at all by that. In

1 fact, I'll encourage you, as I have encouraged you, to
2 continue that work.

3 As far as other loose ends are concerned, if they
4 are truly loose ends, I guess I will have to deal with them
5 after I give you my ruling, which the parties have to
6 realize will in some measure give me a fair amount of
7 control over the outcome, if they can't reach an agreement
8 themselves, because the issue, almost by definition, will
9 not be so important that it would hold up confirmation.
10 Rather, it's just an issue that needs to get resolved one
11 way or the other, and of course, I would rather the parties
12 resolve it on their own, as I expect they would do. But if
13 they can't, I guess we'll deal with that after my ruling and
14 as part of the process of submitting the confirmation order.

15 I won't require the order to be formally settled
16 if I grant confirmation. But I will want to make sure the
17 parties have sufficient time to read any changes to it,
18 including -- you know, obviously, as I told Mr. Anker, he
19 would have time, everyone else falls in that boat too.

20 So, I want to thank all the parties. We covered
21 an extraordinary amount of ground in six days of trial and
22 two days of oral argument. We could not have done that
23 without the parties working very hard to streamline the
24 trail efficiently, which I believe by and large they did.

25 And I also want to thank all of the lawyers, some

1 of whom I have made some gruff comments to. But that is no
2 reflection on the lawyers themselves, but simply to let the
3 parties know my views on that particular issue, which
4 unfortunately, when you're on Zoom, I found the Court needs
5 to be more expressive about than if you're there in person.
6 I'm not quite sure what human chemistry leads to that
7 result, but it's true, based on over a year's experience now
8 in handling hearings remotely. So I hope no one took that
9 personally. It really went to the argument, and not the
10 lawyer.

11 So, thank you all, and I'll see you all again on
12 Friday morning at 10:00.

13 (Whereupon, these proceedings were concluded at
14 6:03 PM)

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C E R T I F I C A T I O N

I, Sonya Ledanski Hyde, certified that the foregoing
transcript is a true and accurate record of the proceedings.

Sonya Ledanski
Hyde

Digitally signed by Sonya Ledanski
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Date: August 26, 2021

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